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NATIVE HAWAIIAN REPARATIONS
COMMUNITY-BASED MENTAL HEALTH INITIATIVE

HEARING

BEFORE THE

SELECT COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

ONE HUNDREDTH CONGRESS

SECOND SESSION

ON

OVERSIGHT HEARING ON NATIVE HAWAIIAN REPARATIONS
MENTAL HEALTH CARE NEEDS FOR NATIVE PEOPLE

AUGUST 26, 31, 1988
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NATIVE HAWAIIAN REPARATIONS

FRIDAY, AUGUST 26, 1988

U.S. SENATE,
SELECT COMMITTEE ON INDIAN AFFAIRS,
Honolulu, HI.

The committee met, pursuant to notice, at 9 a.m., in the Keoni Auditorium, East-West Center, Honolulu, HI, Hon. Daniel K. Inouye (chairman of the committee) presiding.

Present: Senator Inouye.

Also present: Representative Akaka.

Staff present: Alan Parker, staff director; Patricia Zell, chief counsel; Lurline McGregor, professional staff member; and Elva Arquero, chief clerk.

STATEMENT OF HON. DANIEL K. INOUYE, U.S. SENATOR FROM HAWAII, CHAIRMAN, SELECT COMMITTEE ON INDIAN AFFAIRS

The CHAIRMAN. The Select Committee on Indian Affairs will please come to order.

Aloha, good morning, and welcome to this hearing. We are here this morning to receive testimony on the question of Hawaiian reparations.

There is no question in my mind that the Hawaiian people suffered a grave injustice when their government, under the reign of Queen Lili'uokalani, was overthrown in 1893 with the assistance of U.S. Government personnel. Most of us are familiar with the historical events that led to the subsequent loss of Hawaii. However, the question which has never been answered is whether the U.S. Government, based on the deeds or misdeeds of its representatives at the time of the overthrow and subsequent to the overthrow of the monarchy, has a responsibility to provide compensation or reparations.

During the past two decades, I have sponsored numerous proposals to bring this issue before the Congress and the American people.

The 1983 Native Hawaiians Study Commission Report found that there was insufficient evidence to support the claim that the U.S. Government acted illegally during the events surrounding the overthrow of the Hawaiian monarchy. Based on these findings, the majority report concluded that there is no basis for reparations to the Hawaiian people.

As soon as the commission report was released, it was severely criticized by scholars and lawyers and, of course, Hawaiian leaders. The criticism focused on the dubious findings of fact related to the historical role of the United States. Particularly compelling was the testimony of the Library of Congress on the procedures employed by the commission in reaching their conclusions. Obviously, the commission report must be dealt with in a way that overcomes this problem.

Until this is accomplished, there is little likelihood that Congress will act favorably to compensate the Hawaiian people for losses that occurred as a result of these events.

In light of this, there are several options that can be pursued at this point. One option would authorize the Congress to permit citizens to refer the Hawaiian claims question to the United States Claims Court. Clearly, there is much work that would have to be done before such an endeavor could be undertaken, and even then, there is a question of whether the court of claims panel will reach the real merits of the issue. There is no guarantee that the court of claims would issue a favorable report.

Another option is to create a Congressionally appointed commission to study the historical events surrounding the overthrow of the monarchy and to make recommendations based on its findings. This commission would be created by a concurrent resolution passed by the House and the Senate and would not require the signature of the President of the United States. This commission would be composed of Members of the United States House and Senate and other citizens of the United States.

Finally, the Congress could pass legislation to establish another Presidentially appointed commission to restudy the historical events of the overthrow and make appropriate recommendations. Based on the potential for a more favorable atmosphere in the White House next year, the appointees would, in all likelihood, be experts rather than mid-level bureaucrats.

It would appear to me that this latter route, the Presidentially appointed commission, would be the best, although it may be the most difficult, because the present report that is pending before Congress is the report of a Presidentially appointed commission. To undo this Presidentially appointed commission report, I believe it would take another report issued by a Presidentially appointed commission.

Whatever it is, we do have three options, and I would like to have our witnesses present their thoughts as to which alternative would be the best from their perspective.

In my tenure as Chairman of the Select Committee on Indian Affairs, I have heard from many Indian people and, as many of you are aware, I am the first chairman to ever visit most of the reservations. I have been to the Pacific Northwest, to the Plains, to the Southwest, and I have been impressed by the determination of the Indian people to retain their culture which they have done against overwhelming odds for the past 200 years.

Importantly, I have also found that solutions to Indian problems that have been made in Washington have all too often failed. Washington bureaucrats very seldom visit Indian reservations and very seldom know what is really happening. So, it has been my policy to go to Indian country to visit with Indian people and their leaders and seek their answers to problems which I believe that they understand better than Washington bureaucrats.

In the same spirit, I am conducting these hearings, and I will spend much of next week visiting Hawaiian communities throughout the islands. I will be visiting areas where Hawaiians have come together to solve their own problems, including health, education, and economic development in a context that is culturally appropriate.

I strongly support these efforts and will continue to do what I can on the Federal level to assure that Hawaiians have the ability to choose their own life styles.

The issue of reparations is still very much alive, and I hope this hearing will move us a step closer to the resolution of this question. Clearly, the Hawaiian community must be united in its desire for reparations. I think it would be foolhardy on our part to approach Members of Congress if the community of Hawaiians is divided on this issue.

I suppose it would help if we could also unite on the method of resolving this, and that is why I would hope that all of you would give this matter very serious thought.

With that, I would like to welcome all the witnesses. We have many witnesses today. There are seven panels, and it may take us all morning plus part of the afternoon, but please be assured that I will be sitting here to listen to all the testimony.

Furthermore, the committee will receive any written testimony that others may have, and all written testimony will be made part of the record as though presented orally.

Our first witness is the Chairman of the Office of Hawaiian Affairs, the Honorable Moses Keale.

Before calling on Chairman Keale, I would like to present to all of you members of my staff who are with me today. The director of the staff is Mr. Alan Parker. Mr. Parker is an attorney. He was formerly the President of the American Indian National Bank. He is a member of the Chippewa-Cree Tribe. He is the great-great-grandson of the great Hunkpapa Chief Sitting Bull.

The chief legal counsel of the committee is a Navajo lady. She is Dr. Zell. She is a clinical psychologist and also a very prominent Indian attorney. She is the chief editor of the American Indian Law Review.

We have Miss Lurline McGregor, chief legislative assistant for Hawaiian affairs, who is the senior Hawaiian representative on the Select Committee on Indian Affairs. She is a daughter of Hawaii.

Now, Chairman Keale, please proceed.

STATEMENT OF HON. MOSES KEALE, CHAIRMAN, BOARD OF TRUSTEES, OFFICE OF HAWAIIAN AFFAIRS, HONOLULU, HI, ACCOMPANIED BY MELODY MCKENZIE, NATIVE HAWAIIAN LEGAL CORP. AND ADELAIDE DE SOTO, TRUSTEE, OFFICE OF HAWAIIAN AFFAIRS

Mr. **Keale**. Ano'ai kakahiaka kakou. Good morning, Senator Inouye. I am Moses Keale, Sr., Chairman of the Board of Trustees for the Office of Hawaiian Affairs.

I am honored to present our testimony to you and thank you for your continued efforts to aid our claim for reparations and restitution.

As you know, the Office of Hawaiian Affairs is a unique entity, created by amendment to the State Constitution in 1978 to serve the Native Hawaiian people. OHA is governed by a nine-member board of trustees, all of whom must be of Hawaiian ancestry.

The current trustees were elected by almost 60,000 registered Hawaiian voters. As a result, the OHA trustees are directly accountable to the Hawaiian people. The OHA trustees are designated by the people to represent them and act on their behalf, fulfilling the same role as a council of chiefs does among other Native groups.

OHA was established to work for the betterment of conditions of all Hawaiians and was viewed by its creators as a crucial step on the path to Hawaiian self-governance. OHA is the principal public agency in the State responsible for the performance, development, and coordination of all programs and activities impacting on Hawaiians. Another important purpose of the office is to serve as a receptacle for any reparations forthcoming to the Hawaiian people. Consequently, OHA is vitally interested in and has taken an active role in advancing the Hawaiian claim for reparations and restitution.

The claim of the Hawaiian people for reparations and restitution from the Federal Government is solidly based in law and equity. Redress is long overdue.

The claim of the Hawaiian people for reparations and restitution from the United States Government is almost too well known to justify repeating in detail. Nevertheless, I feel that I must begin this testimony by stating once again that the trustees of the Office of Hawaiian Affairs and the entire Hawaiian community believe that the United States Government violated international law and committed a grave injustice in 1893 when its agents took the actions that led to the overthrow of the Kingdom of Hawaii and later to annexation of Hawaii to the United States.

We continue to insist that these injustices must be acknowledged and that lands and money must be returned to the Hawaiian people to repair the damage and restore Hawaiians to a position of dignity and greater autonomy in the Hawaiian islands. It is deeply rooted in American tradition and in the values that have guided this nation to acknowledge such past injustices and to formulate an appropriate remedy for the wrongs that occurred. It is also increasingly recognized in international law that Native peoples have unique rights and a special status which require conquering nations to respect their independence, their land rights, and their culture.

The basis for the claim of the Hawaiian community can be summarized quickly, drawing upon uncontroverted facts found in the majority report of the 1981–83 Native Hawaiian Study Commission.

It is uncontroverted that President Benjamin Harrison indicated in 1892 that his Administration was exceedingly sympathetic to the idea of annexing Hawaii to the United States. It is uncontroverted that John L. Stevens, the U.S. Minister to Hawaii held strong annexationist views from the beginning, and this was well known in the Hawaiian community.

It is uncontroverted that Minister Stevens ordered Marines and sailors from the U.S.S. Boston to come ashore on January 16, 1893, that they took up a position between the Government Building and the Palace, an ideal location from which to participate in any conflict, and that their presence provided a psychological support to revolutionists and served to demoralize the monarchists.

It is also uncontroverted that Minister Stevens recognized the provisional government of the annexationists before Queen Lili'uokalani had resigned or yielded her authority.

Despite these uncontroverted acts of direct and gross interference into the affairs of an independent and sovereign nation, the Native Hawaiian Study Commission's majority concludes that "Native Hawaiians should not receive reparations" because the actions of Minister Stevens were not based on "express authority from the United States Government." These conclusions are reached without analysis or explanation and fly in the face of the factual material in the majority's own report.

The majority's report fails to address the responsibility of a nation for the actions of its duly appointed agents even though international law and U.S. domestic law consistently have concluded that such responsibility exists. One can only conclude that the majority's decision to reject the claim was reached without regard to the facts. The majority's perspective must therefore be rejected.

The claim of the Hawaiian community for the loss of sovereignty and the loss of land is strong and compelling and must be vindicated. The lands which were lost, the approximately 1.75 million acres of government and Crown lands, were lands that were held by the Hawaiian government in trust for the Hawaiian people.

The Crown lands were an integral part of the Hawaiian social and political structure and represented a traditional and common source of wealth for the people as a whole. The government lands had been specifically set aside by Kamehameha III for the benefit of the chiefs and people.

As a result of American intervention in the internal affairs of the Hawaiian Kingdom, these lands were confiscated by the provisional government, transferred to the Republic of Hawaii, and, ultimately, were ceded to the United States. This transfer occurred without the consent of the Native Hawaiian people, without compensation of their interests, and without any explicit protection of their interest. To this day, the Federal Government continues to control large portions of these lands for military and other purposes.

The majority report of the Native Hawaiians Study Commission is fatally flawed and its conclusions must be rejected.

While I wish to focus most of my testimony on the suggestions proposed in Senator Inouye's letter announcing this hearing, the trustees felt it was necessary to make a few comments about the majority report of the Native Hawaiians Study Commission. As you know, we believe that the conclusions of that commission as it relates to the events of 1893 and the legal basis for reparations are fatally flawed.

In previous hearings held before the Senate Committee on Energy and Natural Resources in 1984, legal experts, historians, and others criticized the methodology, analysis, and conclusions of the majority. I do not want to take the time today to reiterate those points but would like to discuss the question of agency in a bit more detail.

The majority report concluded that reparations were not owed to Native Hawaiians because the actions of Minister Stevens were not expressly authorized by the United States Government. As a general rule of international and agency law, however, a government is responsible for acts of its agents regardless of whether such acts were specifically authorized by the government.

The issue is not one of express authority to act, as the majority report attempts to frame it, but whether the apparent and inherent authority of the United States possessed by its agent, Stevens, was rightfully or wrongfully exercised. Under international and domestic law, the United States is responsible for the actions of its agents when they act within areas where they appear to others to have authority even if the United States Government did not specifically authorize those acts.

The agent-principal relationship is essential to government. It is necessary that governmental authority be delegated to agents who will act on the government's behalf. A government cannot enforce its laws or carry out its policies except by acting through its official agents.

Agents, therefore, have authority to act for their principal, the government. Such agency authority was particularly essential to the functioning of diplomacy in the 19th century. United States agents overseas were so physically isolated from their superiors that their ability to represent U.S. interests would have been hopelessly paralyzed by a requirement that each of their actions be subjected to prior review and express approval.

A nation bears general liability for the unauthorized actions of its administrative agents and military forces which fall within the normal scope of their duties or are committed in the exercise of their official functions. Under international law, a nation can mitigate its responsibility for unauthorized actions of its agents by apologizing, disciplining the agents involved, and compensating the losses resulting from their actions. If it does not, then the nation bears full responsibility for the acts.

Stevens' superiors in the State Department neither disavowed, rebutted, or revoked the actions of their agent. Thus, according to the principles of agency and international law, the actions of Minister Stevens were the actions of the United States.

The theory behind this rule of liability rests on two sound principles. First, the government or employer of the agent is better able to absorb the loss and spread it among the citizenry than is the victim. Second, the government that employs the agent is in the better position to prevent the loss in the first place by more carefully selecting the agents to whom it gives authority and by better training them about their responsibilities.

If we apply this principle to the actions of Minister Stevens in 1893, it is clear that the United States is liable for the harm suffered by Native Hawaiians. The United States had the capacity to select its agents carefully and the opportunity to train them about the proper use of U.S. authority.

If a government sends agents to an island kingdom over 5,000 miles away from the government's capitol, the government must expect the agents to exercise discretion when using their power. A government must therefore anticipate the types of actions that are appropriate and instruct the agent with some care. If the government fails to instruct its agents and the agents use their power to harm the citizens of the Kingdom, the government that sent the agents with their military power must logically bear responsibility for the agents' actions.

As applied to Hawaii, the liability of the United States should be obvious. Minister Stevens' actions were not unexpected by the Administration in Washington, and he undoubtedly felt his actions would be viewed with approval by the Harrison Administration. As noted earlier, Minister Stevens was identified by the Native Hawaiians Study Commission's majority report as favoring annexation, and President Harrison also let it be known that he was exceedingly sympathetic to annexation.

The total failure by the Native Hawaiians Study Commission's majority to consider these fundamental principles of international and agency law can only lead to the conclusion that the majority report is flawed and must be rejected.

The Office of Hawaiian Affairs does not support submitting the claim of the Hawaiian people to the United States Claims Court but has other ideas to promote action on this claim.

The Office of Hawaiian Affairs does not support the suggestion to submit the claim of the Hawaiian people for reparations and restitution to the United States Claims Court. The idea of taking our claim to court and having it determined once and for all has a certain simplistic appeal to it. We would be in a different forum, ostensibly one more neutral and open to our claim.

Our research into the record of the Claims Court, its handling of other Native claims, and the Congressional case reference procedure has, however, led us to conclude that it would not be advisable for the Claims Court to consider our claim. Although our claim is well founded in law and equity, we do not wish to submit the claim as an all or nothing package to a panel of judges who have no background or experience in this issue.

Moreover, in other Native claims, the Claims Court too often has taken an overly narrow and technical view which has been detrimental to the Native cause. Finally, the procedures to be followed in a case referred by Congress are unclear and murky, at best, and there would be no appeal to a higher court should the Claims Court reject our claim.

Consequently, although we appreciate the sincerity of your efforts to find new ways to support our claim, we are strongly opposed to this proposal.

The trustees of the Office of Hawaiian Affairs feel that the best way for the United States to establish a new and more honorable relationship with native Hawaiians is through direct legislation enacted by the U.S. Congress. To that end, we reaffirm our commitment to obtaining restitution and reparations and would like to outline the elements that should be part of a reparations package.

First, the United States must acknowledge the wrong and apologize for the role it played in the events of 1893.

Second, the Hawaiian people have the right, along with other native people, to seek sovereignty and self-determination. The Hawaiian people were once part of an independent nation, participating fully in the family of nations until agents and troops of the United States Government acted to overthrow this nation in order to incorporate Hawaii into the United States of America.

The Office of Hawaiian Affairs, conceived of and given birth to by Hawaiians, is a first and crucial step in our movement toward self-determination. Currently, OHA is the entity which is most truly representative of the Hawaiian community and the will of the Hawaiian people.

Article XII, sections 5 and 6 of the Hawaii State Constitution authorize OHA to hold in trust lands and monies set aside for the Hawaiian people. Pursuant to Hawaii Revised Statutes, section 10-3(6), OHA is designated to serve as the receptacle for reparations, and the trustees believe that OHA is the most appropriate entity to receive reparations at this time.

OHA will continue to play a vital role in the process of self-determination, and OHA expects the United States to recognize the right of native Hawaiians to self-determination and sovereignty.

Third, the United States and the State of Hawaii must return lands and natural resources to native Hawaiians through the Office of Hawaiian Affairs. Such lands should include Hawaiian Homes Lands, portions of the ceded lands trust, and lands under Federal control such as Kaho'olawe, Bellows, and other appropriate lands. The United States should also acknowledge the legitimate interest of native Hawaiians in the resources of the submerged lands and the ocean resources of the Hawaiian Islands.

Fourth, the United States and the State of Hawaii must recognize and protect certain native rights such as beach access, fishing, hunting and gathering rights, native Hawaiian religious practices, and historic and cultural sites. Additionally, we wish to strongly state that our native rights cannot and must not be extinguished in any reparations process. These are rights which must be preserved for future generations and, consequently, cannot be extinguished by our generation.

Fifth, the United States must make an appropriate monetary payment to native Hawaiians through the Office of Hawaiian Affairs to compensate them for past losses and lands retained by the Federal Government and to allow the native Hawaiian community to take advantage of its land and resource assets.

Again, we believe that direct legislation by Congress, guided by these principles, is the best, most appropriate, and just way for the United States to deal with the reparations issue.

If, however, it is necessary to have some new body look at this claim before Congress acts, we have several suggestions to offer. The most important criterion for any new body would be to ensure that its members are experts on issues related to native claims and native rights. We would like to avoid at all costs a rerun of the 1981-83 Native Hawaiians Study Commission whose six-member majority consisted of individuals with no background or real interest in Native claims, Native Hawaiians, or Hawaiian history.

The most appropriate new body to examine our claims would be one comprised of some individuals appointed by the national government and some appointed by the Hawaiian people. One approach would be to model such a body on the conciliation commissions sometimes established to address disputes between nations.

Under this approach, the President might nominate two members, the Hawaiian people through the Office of Hawaiian Affairs might nominate two members, and those four individuals would pick a fifth member. If all these individuals had backgrounds in Native issues, then all sides could be confident that their recommendations would be well founded in law and policy.

Such a body would be preferable to a judicial tribunal, because it would have the flexibility to examine all sides of the issues and could mold a remedy that would be reasonable in present circumstances.

In contrast to a judicial body which is trained to rule firmly in favor of one side or the other in an all or nothing fashion, a conciliation commission would be expected to chart more sensitively through the difficult issues in search of a solution that takes all concerns into account and then determines the fair and just solution. This type of a conciliation commission would be the most appropriate body to review our claim if a new body is thought to be necessary.

The other alternatives that have been suggested involve a new Presidential commission like the 1981-83 native Hawaiians Study Commission but, presumably, with more enlightened members, or a Congressionally appointed commission. We would not oppose the creation of such a body and would work with it if it comes into being.

We would insist, however, that its membership be structured to avoid the bizarre charade that occurred with the 1981-83 commission. We would insist that the members of such a commission be eminent individuals with stature and prestige based on their accomplishments and service to the cause of social justice. We would also insist that they have background and training in issues related to Native cultures and peoples.

The members need not necessarily be U.S. citizens. In fact, it would be desirable to have some members who have worked with natives and native claims in Canada, New Zealand, Australia, and other nations with indigenous populations. Individuals connected with national, international, or non-governmental human rights organizations might also be appropriate.

Perhaps the most important element would be to ensure that the Office of Hawaiian Affairs and others in the Hawaiian community have active input into the membership of a new commission and that all members of the commission have the complete respect and confidence of the Hawaiian people.

If a new body is to be constituted, its focus should be narrow. The Native Hawaiians Study Commission used a broad brush to touch upon many aspects of the culture and economic and social status of the Hawaiian people. A new body should instead focus on the narrow question that the majority report of the study commission failed to address satisfactorily: what are the legal, equitable, and moral consequences of the deep involvement of the United States and its agents in the overthrow of the Hawaiian monarchy?

We would also insist that any new commission be adequately funded to ensure that these issues are examined with the depth and care required.

We greatly appreciate the interest of this committee and its staff and the entire Congressional delegation from Hawaii in our claim, and we look forward to working with Congress to develop a package that will settle this claim in a fair and just manner.

We are now in the process of developing legislation which will be submitted in the near future. I will be happy to answer any questions the committee or staff members may have.

Mahalo.

[Prepared statement of Mr. Keale appears in appendix.]

The CHAIRMAN. Thank you very much, Chairman Keale.

Before proceeding, I am pleased to announce the presence of our distinguished senior Member of the United States House of Representatives, the Honorable Daniel Akaka. Congressman Akaka will be testifying after Mr. Keale leaves the table.

Mr. Chairman, your recitation of the chronological events that led to the overthrow of the Queen is not only compelling, but I think it is one of the clearest I have ever heard, and I can assure you that your outline will be incorporated in our report.

Two years ago, I am certain that you are aware that the trustees of OHA called upon me to temporarily set aside the introduction and consideration of any reparations measure, because OHA wanted an opportunity to conduct hearings and investigations and come forth with a recommended measure. Is OHA prepared to present to us the draft of a recommended bill?

Ms. MCKENZIE. Mr. Chairman, I am Melody McKenzie of the Native Hawaiian Legal Corporation.

Professor John Van Dyke and myself have been working in the last three months with the Office of Hawaiian Affairs in order to prepare such legislation, and we expect that that legislation will be prepared by October. So, the Office of Hawaiian Affairs is proceeding with legislation.

The CHAIRMAN. It would be very helpful if we could get a copy of this draft so that Members of Congress can look it over and, equally important, I am certain the Hawaiian community would like to study your product and to make whatever comments they might have.

On the conciliation commission that you speak of, who will select the two Hawaiian members of the community under your plan, OHA?

Mr. KEALE. As stated in my testimony, it would be OHA.

The CHAIRMAN. I presume your statement is the official statement of your organization?

Mr. KEALE. Yes.

The CHAIRMAN. And to the best of your knowledge, it is the majority statement of the Hawaiian community?

Ms. DE SOTO. Senator, this statement was made in response to your letter calling for the hearing. This is a majority report of the board of trustees. We have not been able to secure funding and/or an opportunity to take the statement State-wide to get it validated by the broader community, but it is a sense of truly representing our community at all levels.

The CHAIRMAN. I would like to now call upon Congressman Akaka if he has any questions.

Mr. AKAKA. I have no questions, Mr. CHAIRMAN.

The CHAIRMAN. I would like to thank you, Chairman Keale, for your statement. As I said, it is most compelling, and it is the clearest recitation I have heard in a long while. Thank you very much.

I look forward to receiving a draft of your suggested bill. We would like to study it, and I am certain Congressman Akaka would like to study that also.

Thank you very much.

Mr. KEALE. Mahalo, Senator.

The CHAIRMAN. Now, I would call upon Congressman Akaka for his statement.

Mr. AKAKA. Thank you, Mr. CHAIRMAN.

I want to take this opportunity to thank and commend our Senator Inouye for holding today's hearing. As Chairman of the Select Committee on Indian Affairs, Senator Inouye is singularly responsible for directing the U.S. Senate in affairs affecting the Native people of America—Indians, Alaskans, Aleuts, and, of course, Hawaiians. His is a role that many envy but that few are capable of fulfilling, and I just want everyone to know that he has been doing a fantastic job of responding to the serious needs of Native Americans even in the face of overwhelming adversity.

Reparations, restitution, sovereignty—these are issues that have been around for a long time. By now, it would come as no surprise to me to hear Hawaiians asking why we are going through this process again. We have had numerous extensive hearings in the past, and, still, we have no recognition. We have had a commission study the issue, and, still, we have no recognition. We have even had legal experts discuss and substantiate the validity of our claims for recognition, and, still, we have no recognition.

I can hear the many questions: what difference is this hearing going to make? Is it going to move us forward in our efforts to secure the fundamental rights which we seek? Will our words finally fall on earnest ears, or will they simply be sent to the cavernous archives of Congressional hearing records?

Well, I will be frank with you. This hearing will not result in the awarding of reparations or restitution for Hawaiians. Neither would another hearing tomorrow, next week, or next year necessarily result in the awarding of reparations or restitution for Native Hawaiians.

Recognition will not come to us through hearings, because hearings do not make legislation. People do.

The fundamental factor that we are desperately missing is simply that, people. I am not saying that our people aren't committed to the concept of gaining recognition for ourselves, because your presence here today would prove me wrong. What I am saying is this: no matter what we call it—reparations, restitution, or sovereignty—our goal will not be achieved until we have a unified people willing to move forward with continuous effort, consistent support, and a clear and common sense of purpose.

It is no longer enough for us to simply call for unification. It is simply imperative for us to become unified, and, to a great extent, that is what I see as the fundamental value of today's hearing. We are being given an opportunity to remobilize our efforts and to refocus our direction. With a collective mana'o, I sincerely believe that we can achieve our every desire.

I know that there are a number of proposals floating around. I even helped to draft one of them. I don't know what happened to that one, though I think it has been sent to proposal purgatory, but I will say that no matter what proposal we finally decide upon, it has to be with the full and unrelenting support of the entire community, and it must be with clear and specific goals.

I know that we have many examples from which to choose. We only recently heard of the Maori, the Palauan, the Tongan, and the Tahitian struggles for self-determination, and their stories hit home. Likewise, we have the efforts of many an Indian tribe to look to for guidance and direction.

However, as good as any model can be, there is always room for improvement, and there is always need for personal and special orientation. We have to get our house in order before we can hope to show it to the world.

That is where you, our witnesses, play an important role in shaping our direction. Your testimonies today will reveal what changes need to be instituted and what demands need to be met to improve the effectiveness of our quest.

Now, we have been asked to comment on a variety of legislative approaches, and, after thoughtful deliberation, I have come up with the following.

Personally, on a legislative level, I think that a resolution to the U.S. Claims Court would be a dangerous and risky move for us to take, because it is an up or down vote on our rights, and I don't think the odds are enough in our favor to be worth the risk. If the court says no, then we have had it; we are stuck.

Likewise, I am not convinced that the answer lies in a Congressionally appointed commission to study the issue, because there is so much room for political machinations and partisan disagreement.

Finally, I would support another Presidentially appointed commission only under special circumstances, primarily one with unbiased, objective attitudes about our cause and the cause of Native people.

You may have similar or even opposing views on these matters, and I hope to hear them from you today. However, no matter what our views on the specific strategy, I want to reiterate my earlier comments. Hearings do not make legislation; people do. We certainly do not lack the people necessary to move us forward.

I hope that each of you will continue to do everything in your power to bring our people together. We need it. Our future demands it, and we will surely fail without it.

Mr. Chairman, our senior Senator Inouye, I look forward to hearing the testimony given today. Again, mahalo nui loa for your great leadership in the Senate, in our country, and in calling this hearing today.

Mahalo.

The CHAIRMAN. As you can note from the response of the people assembled here, we thank you for your strong and profound message. It is a message that all of us should listen to very carefully and follow in the days, weeks, and months to come.

I will now call upon the Executive Director of Alu Like, Inc. of Honolulu, Mr. Masaru Oshiro.

Welcome, Mr. Oshiro.

STATEMENT OF MASARU OSHIRO, CHIEF EXECUTIVE OFFICER, ALU LIKE, INC., HONOLULU, HI, ACCOMPANIED BY HAUNANI APOLIONA

Mr. **Oshiro**. Aloha, Mr. Chairman, Congressman Akaka, and staff of the Senate Select Committee on Indian Affairs.

Sitting beside me this morning is Miss Haunani Apoliona, one of Alu Like's key administrators, who has also been assigned the responsibility of doing some research which resulted in Alu Like's testimony today.

My name is Masaru Oshiro. I am Chief Executive Officer of Alu Like, Inc., a private non-profit community-based organization serving the Native Hawaiian population State-wide.

Since 1975, Alu Like has provided a full range of human services in partnership with Federal, State, and private corporations.

We have followed the course of the 1983 Native Hawaiians Study Commission and expressed our disappointment on its findings. In January 1986, Alu Like responded to a proposed Native Hawaiian Claims Settlement Act by supporting the provision which should have Congress recognize the United States' participation in activities contributing to the overthrow of the Hawaiian monarch in 1893, that the United States participation was opposed by Native Hawaiians, that United States participation violated Hawaii's right to independence and violated the principle of non-intervention in the internal affairs of another nation, that the United States has a moral and legal obligation to provide reparations to the Native Hawaiians, and that the purpose of the act be the provision of reparation to Native Hawaiians.

At that time, Alu Like also supported the proposed legislation defining Native Hawaiians as any individual whose ancestors were native to the area that constituted the Hawaiian Islands prior to 1778.

We strongly believe that a thorough and unbiased study of the historic events leading up it, including, and following the overthrow must be done to replace the findings of the 1983 study commission report. In order to pursue this, Alu Like supports an approach which would establish a Congressionally appointed commission to study the historical events surrounding the overthrow of the Hawaiian monarchy and make recommendations based on its findings.

As stated in your July 12, 1988 letter, such a commission would be composed of Members of both Houses and represent both the majority and minority parties. Experts who have thoroughly researched these events must be involved as commissioners or appointed in an advisory capacity. These experts should be Native Hawaiians, Native Americans, or individuals who have demonstrated expertise in the area of Native American issues and law.

We applaud the Senate Select Committee on Indian Affairs' decision to rehear this issue, and we look forward to participating in future deliberations to correct this historical injustice.

Mahalo for this opportunity to testify.

[Prepared statement of Mr. Oshiro appears in appendix.]

The **Chairman**. I thank you very much, Mr. Oshiro.

You have heard the testimony of Chairman Keale and Congressman Akaka. Do you concur with their testimony as it relates to the reference of this matter to the Claims Court?

Mr. **Oshiro**. Our board, reviewing the communication received from your office, opted to support the second option which means that we do not support going to the Claims Court.

The **Chairman**. Would you be against having a Presidentially appointed commission?

Mr. **Oshiro**. Our board did not address the third point. We stuck to the second, believing that at this time, this would be our position. However, at this point, a lot of things are possible, but our official position is to support option number 2.

The **Chairman**. I thank you very much.

Congressman Akaka.

Mr. **Akaka**. I have no questions, Mr. Chairman.

The **Chairman**. I thank you very much, Mr. Oshiro.

At this juncture, I think I shall advise the people assembled here that for those of you who are concerned about appointing another commission, we should remind ourselves of the path we took to statehood. I believe before statehood was granted to Hawaii, we must have had at least a dozen special commissions coming to Hawaii to conduct hearings and investigations.

I don't anticipate having a dozen commissions to investigate the question of reparations. I hope the next one will be the decisive one, but don't feel badly because the first one was negative. There is always another one coming up.

Our next two witnesses will constitute a panel. They are the Chair of the Native Hawaiians Study Commission, the Honorable Kina'u Boyd Kamali'i; and a member of the commission, Mr. Rodger Betts.

STATEMENT OF KINA'U BOYD KAMALI'I, CHAIR, NATIVE HAWAIIANS STUDY COMMISSION

Ms. **Kamali'i**. Aloha, Senator Inouye and Congressman Akaka. I thank you for this opportunity to testify this morning.

Before I offer my comments on the substance of this hearing, I would like to express my personal mahalo nui loa to you, Senator Inouye, for calling and conducting this meeting. Your commitment to seeking justice for the Hawaiian people has been unwavering.

As important, your commitment has been politically responsible. Like you, I have known first hand the political impossibility of pursuing Native Hawaiian claims for national restitution under the present Administration. It is with a shared political optimism for a new national Administration and a renewed Federal social conscience that I join you at this hearing.

My remarks today will focus on what I believe are the strengths and weaknesses of the three circulated options for future Federal action on Native Hawaiian claims. There is the temptation to review the historical wrongs of lost lands and sovereignty which dishonor the relationship between the United States and the Hawaiian nation, but in this forum, I would only be preaching to the choir.

Rather, I am again submitting volume II of the Native Hawaiians Study Commission report for your record.

It is enough today to say that it is uncontroversial among historians to acknowledge that the United States stole Hawaii from the Hawaiians. The controversy instead involves what should and what can be done in response to that historical fact.

Thus, our challenge in selecting a future path is in deciding where there is the greatest likelihood for success. This challenge must be answered with the following in mind. To a degree I would have thought impossible in 1983, there is a general agreement within the Hawaiian community and its leadership that claims restitution must include a national apology, a settlement involving land and money, and a formal recognition and mechanism for Hawaiian self-determination and resources management.

Knowing that these are the elements of settlement argues strongly against the option of the Claims Court.

First and most significant, the Claims Court, as noted in the Congressional reference cases in the "United States Court of Claims: A Historic and Current Perspective Report" which you circulated, Senator, cannot award land. Without that possibility, any settlement by the court would be viewed as unsatisfactory, no matter how generous.

Further, there is no appeal of the Claims Court decision. Its ruling would be final and could extinguish Hawaiian claims without any future recourse. However, Senator, please do not misunderstand my comment as a reflection on the integrity of the Claims Court. Rather, it is the inexperience and untested knowledge of the court on Hawaiian claims which troubles me.

The Hawaiian people and history are profoundly different from those of our Indian cousins. Yet, it would be, to my mind, virtually impossible for the Claims Court to separate their established base of information and action with American Indians from Hawaiian claims, and that confusion could fatally jeopardize success.

The other two possible options, a Congressional or Presidential commission, offer greater flexibility and allow more creative resolutions. However, I believe there is a substantial difference in the political effectiveness of the two possible commissions.

With the Native Hawaiian Study Commission which I chaired, we have experienced a Presidentially appointed commission. Under-funded, under-staffed, and actively undermined, that commission may not be a fair example of what is possible.

I believe that Rodger Betts will detail the built-in flaws which so hampered and then divided the findings and conclusions of that commission.

However, even at its best, a Presidential commission is better suited to advising executive, not legislative, decision making.

As we recommended in Volume II, I am still convinced that Native Hawaiian claims can and should be addressed through direct Congressional actions. This route resolved Native Alaskan claims without the protracted and expensive claims court deliberations undertaken by most American Indian tribes.

In addition, no better example of the political edge afforded by a Congressional commission comes more quickly or persuasively to mind than the Japanese Relocation Commission. With a clear mandate, not an ambiguous charge to study the culture of Japanese Americans, with intense involvement by affected, elected representatives, and with a determination to do all that was possible to expose possible government culpability, that commission overwhelmed national resistance by arguing facts and asserting the simple need for justice.

I can still remember when headlines announced that the commission's discovery of once-unknown documentation that the government knew it was doing wrong even as it was doing it.

I believe there are similar damning documents regarding the American armed invasion of Hawaii in 1893. The public record of diplomatic correspondence between Hawaii and Washington has a very intriguing blank space. We have Minister Stevens writing to DC after the Presidential elections of 1892 relaying his feelings that the U.S. must soon choose between action to "pluck the ripe pear" or watch the kingdom dominated by England. We have no record of the response to this request for a decision on which choice the government wanted to make.

We also have no record of Navy Department instructions to Commander Wiltze.

A substantial amount of research was completed by the Native Hawaiian Study Commission. No future commission should ever feel that it must start from scratch. However, those tantalizing gaps in our knowledge could prove to be the smoking gun, the evidence which would elevate the events of 1893 from the arguable rogue actions of a single, distant American minister to a willful wrong by one nation against another nation, just as once-unknown internment documents proved Federal awareness that there was no threat from Americans of Japanese ancestry in a time of war with Japan.

In conclusion, then, I would endorse a Congressional commission comprised of elected national representatives, knowledgeable citizens, and a budget that will allow them to carry out their mandate. Their charge would be to conclusively and decisively address the events and consequences of 1893. Once resolved, they would then have the responsibility for recommending legislative settlement.

Only then would another sad chapter in American history be not closed but written and left open for all to read again and again as a lesson in justice.

Mahalo, Senator.

[Prepared statement of Ms. Kamali'i appears in appendix.]

The CHAIRMAN. The applause speak much louder than anything I can say about your testimony, Kina'u.

I will call upon Rodger Betts, and then we will go to questions.

STATEMENT OF RODGER BETTS, COMMISSIONER, NATIVE HAWAIIAN STUDY COMMISSION

Mr. BETTS. Senator Inouye and Congressman Akaka, aloha.

My name is Rodger Betts. I am an attorney engaged in private practice of law at 34 North Church Street, Wailuku, Maui, Hawaii. I am of part Hawaiian ancestry.

Since 1974, I have been substantially involved in the study of events surrounding the overthrow of the Hawaiian Monarchy. Most recently, I served as a commissioner on the Native Hawaiian Study Commission.

The Native Hawaiian Study Commission was a Presidentially appointed commission consisting of nine commissioners, six of whom were mid-level executive Federal officers and three of whom were of Native Hawaiian ancestry from Hawaii. Kenau Boyd Kamalii and Winona Beamer were my fellow commissioners from Hawaii.

Kinau served as chairman of the commission and performed magnificently in that capacity, notwithstanding the financial constraints imposed on the commission which made it extremely difficult or impossible to do a thorough and unbiased study of the matter which is before us today, namely, whether or not the assumption that the success of the revolution of 1893 and the establishment of the provisional government depended on the wrongful acts of the United States Minister to Hawaii and the lawless occupation of Honolulu by the United States Navy is indeed an historic fact.

President Cleveland, in his special message to the United States Senate and House of Representatives dated December 18, 1983, said, in part, as follows:

As as aside, Senator, I cite this not so much to argue the case at this point, but I believe what I will cite frames the question as to what a commission must find as to whether it is true or not true.

President Cleveland, Chief Executive of the United States of America, in dealing with this problem, said the following:

> The lawful Government of Hawaii was overthrown without the drawing of a sword or the firing of a shot by a process every step of which, it may safely be asserted, is directly traceable to and dependent for its success upon the agency of the United States acting through its diplomatic and naval representatives.
>
> By an act of war, committee with the participation of a diplomatic representative of the United States and without authority of Congress, the government of a feeble but friendly and confiding people has been overthrown. A substantial wrong has thus been done which a due regard for our national character as well as the rights of the injured people requires we should endeavor to repair. The Provisional Government has not assumed a republican or other constitutional form but has remained a mere executive council or oligarchy, set up without the assent of the people. It has not sought to find a permanent basis of popular support and has given up no evidence of an intention to do so. Indeed, the representatives of that government assert that the people of Hawaii are unfit for popular government and frankly avow that they can be best ruled by arbitrary or despotic power.
>
> On that ground, the United States can not properly be put in the position of countenancing a wrong after its commission any more than in that of consenting to it in advance. On that ground, it can not allow itself to refuse to redress an injury inflicted through an abuse of power by officers clothed with its authority and wearing its uniform, and on the same ground, if a feeble but friendly state is in danger of being robbed of its independence and its sovereignty by a misuse of the name and power of the United States, the United States can not fail to vindicate its honor and its sense of justice by an earnest effort to make all possible reparation.

As I said, Senator, I cite this as it will frame the question. I believe it to be so, and I think anyone can say the same thing today, but I think President Cleveland was more accurate. He was around when it happened.

It seems to me we must now thoroughly investigate whether or not the President of the United States of America, in his message to the U.S. Congress, in its entirety, made an accurate analysis of the case.

The majority report of the Native Hawaiian Study Commission concluded that there is no basis for reparations to the Hawaiian people. The minority dissenting report found to the contrary, and it was a well done report, I might add.

I agree with you, Mr. Chairman, that a thorough and unbiased study of the historical events leading up to and including and following the overthrow must be done to replace the findings or confirm the findings of one or the other of the current reports.

In your letter of July 12, 1988, Mr. Chairman, you present three options as to what method would best achieve the goal mentioned above. They are:

1. A Senate resolution to the U.S. Claims Court;
2. A concurrent resolution to establish a Congressional appointed commission to make the study; and
3. Legislation to establish another Presidentially appointed commission to conduct the study.

Of the three methods, I would select method number 2 listed above.

First, a concurrent resolution to establish a Congressionally appointed commission would be the fastest way to establish an investigating commission. Methods 1 and 3 could take forever. Enough time has passed, 95 years. The resolution of this problem is long overdue.

Second, the composition of the commission from both Houses of the Congress and from both political parties would offer the best opportunity for a thorough and unbiased study. I would recommend that the commission be broadened by the appointment of experts in the field in addition to Members selected from the House and Senate. In either case, an advisory group of experts should also be appointed as you have recommended.

Third, this study commission would also have members who not only will make recommendations to both Houses of Congress but who also will participate in the final decisions of the Congress of these United States.

Fourth, I believe that the question belongs in the legislative branch of the government for resolution. It must be approached in the broad scope that only the legislative body can employ. It is not only a legal question whose answer must necessarily follow restrictive restraints but also in the broadest sense deals with the deepest and most profound question of what we as a nation stand for. Our national morality and conscience is involved. Our national and personal sense of honor and decency are at the fore. Only the Congress, in the end, can define what we as Americans stand for as a people. Do we as a nation practice what we preach?

My second choice would be the Presidentially appointed commission with the members being experts in fields related to the issue at hand. Again, such a commission should be bipartisan in composition.

I suppose, Senator and Congressman, Kinau and I put this second on the list because we have had a bad experience.

Thank you, Mr. Chairman, for the opportunity to testify. Thank you also for your long-standing diligence and patience on all matters that have come before you involving the Native Hawaiian.

I am truly grateful for the caring concern that you have steadfastly demonstrated through the years you have held your high office. I extend to you on my behalf and on the behalf of Native Hawaiians throughout Hawaii Nei our warmest aloha.

If you have any questions, I would be happy to answer them.

[Prepared statement of Mr. Betts appears in appendix.]

The **CHAIRMAN**. I am certain I express the sentiment of the assembled group when I extend to you and Kinau the gratitude of the Hawaiian community in diligently working on this study commission and coming forth with the report which is officially considered the minority report, but I think in our hearts and minds it would be the majority report.

Thank you very much.

We would like to submit questions of some technicality which involve the workings of your commission. If you could at your leisure respond to some of them, I would appreciate that. There are just some technical things, because we don't want to make the same mistakes with the next commission if we are going to have a new one.

Ms. **KAMALI'I**. I would be very happy to respond.

Mr. **BETTS**. I, too, will respond in writing.

The **CHAIRMAN**. Thank you very much.

Our next panel consists of the following: The Acting Director of the Hawaiian Studies Program of the University of Hawaii, Dr. Kekuni Blaisdell; the Vice President of E Ola Mau of Honolulu, Dr. Naleen Andrade; and attorney at law in Honolulu, Ms. Mililani Trask.

Dr. Blaisdell.

STATEMENT OF KEKUNI BLAISDELL, M.D., ACTING INTERIM DIRECTOR, CENTER FOR HAWAIIAN STUDIES, UNIVERSITY OF HAWAII AT MANOA

Dr. **BLAISDELL**. Thank you, Senator Inouye and Congressman Akaka.

I am Kekuni Blaisdell, Acting Interim Director of the Center for Hawaiian Studies, and I speak on behalf of our center, the University of Hawaii at Manoa, and the University of Hawaii Statewide Hawaiian Studies Councils.

Any discussion of reparations to native Hawaiians from the United States Government that in any way implies final restitution or settlement of all claims for the redress of past wrongs through the payment of monies or land is not only premature at this time but dangerous and, thus, unacceptable.

The complicity of the United States Government in the 1893 armed invasion and overthrow of the legitimate government of the Hawaiian people and the consequent usurpation and mismanagement of our lands are injustices which no award of money or property can rectify.

The separation of the Hawaiian people from our land which had always sustained us has resulted in the progressive deterioration of our physical, psychological, and spiritual condition. This process can only be reversed through the restoration to us not just of our lands but of our rights, the free exercise of our religion, culture, and our language which are inextricably tied to that land. These rights derive from the Hawaiian peoples' entitlement to self-determination, and it is self-determination that should be the topic of this Senate committee hearing.

Absent the recognition of our entitlement to self-determination, reparations are no more than an attempt to buy what ought never to be for sale, namely, control by Hawaiians over our own future.

This central issue of concern for native Hawaiians, the issue of self-determination, entails the creation of a government of our own, designed and established by the Hawaiian people, separate from and recognized by the United States Government and the State of Hawaii on a nation-to-nation, government-to-government basis.

Recognition of Hawaiian nationhood by the United States and the State of Hawaii would constitute acknowledgement that native Hawaiians have the same powers, access, and benefits that the United States Government currently recognizes in 308 American Indian, Eskimo, and Aleut nations. Any such arrangement should also make clear that native Hawaiians are not Indians but that our claim to sovereignty is as strong as that of any native American people.

The Hawaiian Kingdom, prior to 1893, had been a separate nation, recognized as such by the great powers, including the United States, for over 50 years until it was toppled by armed U.S. naval forces. Accordingly, a public apology by the U.S. Government for its role in the armed overthrow of the Hawaiian monarchy and formal recognition by the U.S. Government and the State of Hawaii of the sovereignty of the Hawaiian people are essential.

The form that the Government of, by, and for the Hawaiian people will take must be decided by the Hawaiian people, not by non-Hawaiians or by any existing Federal or State agency. Meanwhile, no other already established agency or body has the right to act on behalf of the Hawaiian people.

OHA is, and should remain, a State agency which sets State of Hawaii policy toward the native Hawaiian people. OHA should not be federalized or otherwise reconstituted to receive reparations and restitution.

Reparations are not owed to the State but, rather, to the native Hawaiian people. Thus, at the appropriate time, the people, not the State, should decide what constitutes suitable forms of reparations.

Since 1972, U.S. Federal law has called for self-determination for all native American peoples. While implementation of this policy on behalf of American Indians has proceeded, we Hawaiians have been pointedly ignored and, indeed, opposed in our efforts to seek justice. The suggested options of redress through the U.S. Claims Court, a Congressional study commission, or yet another Presidential study commission are options that will undermine rather than advance, the Federal policy of granting self-determination to native peoples.

The movement for the recognition of the self-determination of indigenous peoples has gained momentum at international forums such as the United Nations and the South Pacific Forum. The

United States, in keeping with this worldwide effort, should facilitate the assertion of self-determination by the native peoples within its territorial control.

The process of formally recognizing native Hawaiian self-determination and the right to a native Hawaiian government must be initiated by the Congress now without awaiting or deferring to any future Presidential or Congressional commissions.

It is the responsibility of each member of Hawaii's Congressional delegation such as the two sitting before us to offer every assistance in the effort to pass appropriate enabling legislation for self-determination now.

It is also the responsibility of OHA, the Department of Hawaiian Homelands, other relevant State agencies, appropriate Federal agencies, Alu Like, and other private Hawaiian and non-Hawaiian organizations to support and organize support for this important movement which moral justice and international law have demanded for more than 95 years.

We cannot and should not wait any longer. The time is now for the case of Native Hawaiian nationhood to be officially recognized and implemented.

Accordingly, we recommend that the Senate Select Committee on Indian Affairs designate staff and other resource persons and provide funds to meet regularly with representatives of the Native Hawaiian community, to include Ka Lahui Hawaii, the Center for Hawaiian Studies, E Ola Mau, Protect Kaho'olawe 'ohana, Na 'Oiwi O Hawaii, Na 'Ohana O Hawaii, and others to begin drafting Federal legislation to address these concerns now for recognition of our sovereignty and not quick settlement by reparations.

I would like to yield the remainder of my time to my fellow panelists, Dr. Naleen Andrade of E Ola Mau and Mililani Trask, to provide additional arguments in our united position for sovereignty now rather than settlement of harmful reparations.

Mahalo.

[Prepared statement of Dr. Blaisdell appears in appendix.]

The CHAIRMAN. Thank you, Dr. Blaisdell.

Dr. Andrade.

STATEMENT OF NALEEN ANDRADE, M.D., VICE PRESIDENT, E OLA MAU

Dr. ANDRADE. Aloha, Senator Inouye and Members and staff of the Senate Select Committee on Indian Affairs.

I am grateful for this opportunity to present testimony on Hawaiian reparations on behalf of E Ola Mau, an organization of Native Hawaiian health professionals whose primary goal is to address the severe health needs of our Native people.

E Ola Mau's analysis of Native Hawaiian health reveals that Hawaiians exhibit poor health because of a lack of lokahi, the harmony of the self with others and all of nature in the cosmos. By self, we mean body, mind, and spirit. This lack of lokahi has resulted in four core conditions among Native Hawaiians.

First is the loss of self. Modern-day Hawaiians can be said to suffer from a lack of faith in the Hawaiian self. We have allowed others to redefine us for their own convenience.

Second is the breakdown of the ohana system. Hawaiians may also be said to have lost the understanding and consistent use of the ohana belief system. The ohana or family was the basic unit of social interaction in traditional Hawaiian society in which members of the ohana contributed their resources to address their needs, social, economic, religious, psychological, and other needs that were necessary. In a very real sense, without ohana, Hawaiians lack a home, a place of comfort, safety, consistency, and nurturing.

Third is the loss of an orienting force. Traditional Hawaiians relied on the kapu system as the orienting force which established pono, a concept brilliantly presented by Dr. Lilikala Kame'eleihiwa, professor at our Hawaiian Studies Center here at the university. Pono is the Native Hawaiian belief that the law of the universe is to be in perfect balance.

Finally, the fourth core condition that E Ola Mau finds among our people is the loss of aina. Aina or land literally means that which feeds or nurtures. The loss of aina refers to the real and symbolic aina which ties the ohana together and feeds the body, mind, and spirit. Recent efforts of Hawaiians trying to reclaim their lands have been well publicized and not very successful. Symbolic aina refers to a sense of belonging to one's ancestral beliefs and aumakua or ancestral gods which nurtures one to practice lokahi and, ultimately, achieve pono.

These four conditions exist largely because Hawaiians, in losing their sovereignty, have lost the right and means by which a people govern themselves and establish the laws that define who they are and how they as a people will behave in their homeland. From a once great nation, Hawaiians have been reduced to a remnant best known as the sellers of leis and aloha.

No amount of money can replace this loss. Reparations alone cannot change the core conditions outlined above or the prevalent perception of our Native people today.

There is much talk today of the need for Hawaiians to become a united people with a common vision right now, today. In fact, a lot of Hawaiians act as if it should have happened yesterday.

This kind of statement is based on a false assumption that the majority of Hawaiians know and understand the history, the laws, and all the possibilities for Native Hawaiians in our future. However, if we look at health statistics, what we find is that the great majority of our Native people are too busy simply surviving on poverty level incomes. Education and public awareness must occur before political action in the form of written legislation can responsibly occur.

A few years ago, the concept of sovereignty would never have occurred. It would have seemed sacrilegious and radical. Yet, today at this hearing, we hear people who are considered conservative in our community advocating for sovereignty.

Why is that? It is because of leaders like Mililani Trask and Kekuni Blaisdell who have had the courage to be different and to be on the cutting edge and also to take the next step in their different ideas which is to responsibly educate our people about different ideas, different possibilities, and different visions.

Our founding fathers in the United States of America were just a few men. When they wrote our constitution, they had trouble bringing people together from the different areas. Yet, today, look at our great nation. It is because they carried out public awareness and because they had the vision to spread it out throughout the people, and, today, we have America.

E Ola Mau believes that the restoration of lokahi and pono among our Native people must come from the Hawaiians themselves. We must learn again to be a sovereign people, and that takes time.

We are not advocating giving up our American citizenship but, rather, to receive the same respect and rights as our American Indian, Alaskan, and Aleut brothers and sisters. America is great enough of a nation to ensure this kind of freedom.

In Hawaii, there are movements such as Ka Lahui Hawaii that are attempting to work within the framework of the American Constitution in order to restore our Hawaiian nation. We ask that the Select Committee on Indian Affairs work with Ka Lahui Hawaii and other interested Hawaiian organizations to begin the healing that goes beyond the band-aid approach that reparations suggest and begins the deeper healing needed to restore a Native people.

At this time, I would like again to thank you all and give the rest of my time to our remaining speaker on our panel.

[Prepared statement of Dr. Andrade appears in appendix.]

The Chairman. Thank you, Dr. Andrade.

Ms. Trask.

STATEMENT OF MILILANI TRASK, ATTORNEY AT LAW, KA LAHUI, HI

Ms. Trask. Good morning, Senator, Members of the Senate Select Committee on Indian Affairs, and Henry Guini whom I think was here earlier. I also thank my panelists for sharing their remaining time with me.

On behalf of the legislature of Ka Lahui, HI and pursuant to section 6, article VI of the Constitution of Ka Lahui, HI, enacted in March 1987, I am pleased to present this testimony to the Senate Select Committee on Indian Affairs as Kia'aina of Ka Lahui, HI.

First, I would like to present our response to the options proposed by the Senate select committee for proceeding with reparations for Native Hawaiians.

It is the position of Ka Lahui, HI that no action should be instituted in the United States Court of Claims for the following three reasons:

First, there is very little by way of legal precedent for the court to follow given the subject matter and the nature of the claims that would be raised.

Second, because the United States has not recognized Ka Lahui Hawaii and currently has no administrative or other procedure to provide for recognition of a native governing entity which is separate from the State and Federal governments, there is no one at the present time certified to bring a claim before the Court of Claims. Any attempt by the United States or the State to afford standing to their own agencies or instrumentalities would be contrary to self-governance and self-determination for native Hawaiian people.

Third and, I think, most importantly, there are hundreds and possibly thousands of individuals whose geneological data support a relationship to the last ruling monarchs of Hawaii. Consequently, any action brought to the U.S. Claims Court would result in the proceeding being cast in the light of a probate matter rather than looking at a question of self-determination or self-governance for Native Hawaiians.

I want to say in this respect that it has been common knowledge in the community that many of the ali'i families have already retained counsel, Kasuhisa Abe being, I think, most prominent among them, and they have tried in the past to go to Congress with their claims. They are looking to resolve title problems relating to the Crown lands.

So, we feel that the action of going to the Court of Claims should be avoided at all costs.

With regard to the remaining two positions, the Congressional and the Presidential commissions, our position regarding these two options is that it is premature to make a determination. A Presidential commission might be a preferred mode, depending on who the President is and what his position would be on the matter. We don't know who is going to be the next President. It looks like it is going to be a close race, but before we make a determination whether we would favor a Presidential or a Congressional commission, we would like to see who would be the President of the United States.

Regardless of the above, it is our position that it is doubtful that either of these options will resolve the problems which fact the native people today. The question is not really what happened in 1893 but what needs to be done in 1988 to address the demands of the Native Hawaiian people for self-determination.

The position of Ka Lahui Hawaii regarding reparations is the following:

In 1893, the Sovereign Queen of the Kingdom of Hawaii ceded authority of her kingdom to the United States. As a consequence, the United States, by terms of international law, accepted the responsibility to provide for the Native Hawaiian people and to protect our property rights. Subsequently, the United States, through acts of its Congress, created two native land trusts, the Hawaiian Homeland Trust of 1920 and the Ceded Land Trust of 1959, for the betterment of conditions of our people.

The current Federal policy which governs the relationship of the United States to its native people provides for recognition of their right to be self-governing, to control and exercise jurisdiction over their lands, to administer tribal courts, and to receive direct Federal grants for governance, for health, education, and for other governmental services.

We have attached as Exhibit A our Constitution and here cite Exhibit B which is our Fact Sheet, the first section of which contains a synopsis of the Federal policy which was gleaned from the Congressional Record.

Native Hawaiians are excluded from these policies and from all administrative procedures, including the Department of Interior regulations, the BIA regulations, and the Federal Acknowledgement procedures which would provide us with the inherent right to be self-governing. Despite clear and convincing evidence of extensive breach of trust on the part of the State and the United States, native Hawaiians are denied access to the U.S. District Court for resolution of claims relating to the mismanagement of their ceded lands.

The July 6, 1988 memo to the Senate Select Committee from the American Law Division indicating that native Hawaiians "are not organized in governmental units" is incorrect. In August of 1987, Ka Lahui, HI, as a governing body, met with the Senate Select Committee, members of your staff and the Chair, to transmit to you the fundamental documents of governance of our nation and to request that you commence working with us on reparations. Ka Lahui Hawaii, at the present time, has received a grant from ANA to help us with our efforts for self-governance. This is in conjunction with N.H.L.C., the Native Hawaiian Legal Services Corporation.

We are currently enrolling native people into the nation. To date, neither the State nor the Federal Government have created or maintained a roster of native Hawaiians. We don't have a tribal roll. Consequently, this responsibility falls to Ka Lahui Hawaii as a Native nation.

Attached hereto as exhibit C is the resolution of the legislature of Ka Lahui Hawaii regarding reparations. We passed this at our fourth session 2 months ago at Nanakuli precisely for the purpose of bringing it here to you.

In the interest of expediency, this testimony will incorporate by reference the position statement of Ka Lahui Hawaii regarding preparations transmitted to, Senator Inouye, and Pat Zell, in August of 1987.

There were two memos prepared for the Senate select committee in August 1987 by Mr. Taylor and Mr. Mahsetky. At that time, the legislature of Ka Lahui reviewed these documents. We had a meeting with our governmental committee. We also brought it into the planning and executive committees.

We sent up responses, and we have attached those two responses here as exhibits D and E. We are requesting that the Senate select committee provide us with a response. These were sent up in October and November of 1987.

We are very concerned about the misconceptions that were presented in these two memoranda regarding not only the Office of Hawaiian Affairs and the Department of Hawaiian Homelands but also regarding the current situation of our people in Hawaii.

The time has come for inclusion of native Hawaiians and their governing entity in the existing Federal and State structures and for Federal recognition of Ka Lahui Hawaii.

At present, Ka Lahui Hawaii is in receipt of Federal monies being used to conduct workshops and complete an enrollment of the Native Hawaiians people. The constitution of Ka Lahui Hawaii is a democratic document which provides for great flexibility and an amending process. Historical continuity is maintained by virtue of provisions of article III which provide for inclusion of the traditional chiefs or Ali'i of our people who are charged with the responsibility of advising the unicameral legislature on matters relating to protocol and culture.

We do not need an Indian Reorganization Act, and Indian Self-Determination Act, a Federal BIA, and we don't need a federalized version of the Office of Hawaiian Affairs at this point. These basic concerns are being addressed and met by Ka Lahui and its legislature.

The Senate select committee would do native Hawaiians a great disservice by forcing our people into the Indian model, because the Indian models are based upon their unique legal and historical relationship to the United States. The Indian model is applicable only in the broadest sense. Native Hawaiian people are not Indians.

We are greatly concerned with efforts being undertaken in Hawaii and in Washington to federalize the Office of Hawaiian Affairs. This movement, we believe, was generated as a result of the Taylor and Mahsetky memos of August 1987. For this reason, we have attached our responses to you once again, and we are requesting that a copy of this document and these exhibits be distributed to all of the members of the Senate Select Committee on Indian Affairs.

Recently, when I was in Atlanta, Georgia, I met with some other Members of the Senate select committee and their staff, and they were totally unaware of the meeting that occurred in August 1987 and did not receive any of the data that we had given to the Senate select committee staff and Senator Inouye.

If Federal reparations is to mean anything to Native Hawaiians and Hawaiians, it must be more than a report pointing the finger of blame over the historic events of 1893.

There is no legitimate reason why the United States of America should exclude Hawaiian aboriginals from its policies affording the native Americans the right to be self-governing.

The Senate Select Committee on Indian Affairs should sponsor reparations legislation as per the resolution of the legislature of Ka Lahui O Hawaii. In addition, Ka Lahui O Hawaii's constitution provides for protection of native rights to fish, gather, worship, and undertake traditional and cultural practices. These rights should be recognized and provided for on Federal reserves throughout the Hawaiian archipelago. At present, the United States is contemplating drafting Federal rules governing fishing in the Pacific Basin. Native Hawaiian rights should be addressed and provided for therein.

For several years, the State of Hawaii, the United States Navy, and the U.S. District Court have recognized the Protect Kaho'olawe Ohana as the Native cultural guardians of Kaho'olawe Island. Ka Lahui O Hawaii's legislature has two vacant seats. We have filled all of the remaining seats, including Niihau and Lanai, but we have two vacant seats which are allocated for Kaho'olawe's representatives.

These seats cannot be filled until the Protect Kaho'olawe Ohana are allowed residences on that island. Kaho'olawe Island is entirely ceded land. Ka Lahui believes that the entire Island of Kaho'olawe should be included in the ceded lands which are segregated and awarded to Ka Lahui.

In 1987, Ka Lahui O Hawaii requested the Senate Select Committee on Indian Affairs to propose legislation which would allow the Native people the right to bring an action in Federal District Court against the United States and the State of Hawaii for breach of the native trusts. We were led to believe at that time that legislation would be introduced.

However, in March 1988, we learned that there would not be any legislation introduced at the request of Governor John Waihee. We have attached as exhibit F a response that we received from your committee and also a 7-page response that we sent back.

OHA and the Governor have met in closed sessions since January of 1987 in violation of the State sunshine laws to discuss division of the ceded lands and assets. After 5 years of lobbying for a right to sue bill, Governor Waihee and the Office of Hawaiian Affairs were successful in obtaining passage of a bill which allows the native people to use the State for breach of trust but which prevents the courts from awarding successful plaintiffs either land or monetary damages needed to provide infrastructure on their lands. The relevant provision of the State statute reads as follows:

> In any action under this chapter, the court may only award land or monetary damages to restore the trust which has been depleted as a result of any breach of trust duty and no award shall be made directly to or for the individual benefit of any particular person not charged by law with the administration of the trust property.

Consequently, under the State statute, if a native beneficiary sues the State agencies responsible for management of the native trusts, OHA or DHHL, and they are successful, all lands and moneys would be awarded by the court either to the Department of Hawaiian Home Lands or to the Office of Hawaiian Affairs.

On April 5, 1988, Ka Lahui O Hawaii sent to the Senate Select Committee on Indian Affairs a 7-page document citing the Federal State Task Force on Hawaiian Home Lands report of August 1983 documenting the need for Federal legislation on this matter. To date, we have not received your response.

By law, the Office of Hawaiian Affairs has a fiduciary obligation to act exclusively in the interest of native Hawaiians, those of 50 percent blood, in its management of the ceded land trust and assets. In its 8 years of existence, OHA has failed to meet the needs of native Hawaiians for housing, education, medical services, and economic self-sufficiency.

Despite this fact, OHA has announced its intention to hold a plebiscite on the November election to change the definition of the term "Native Hawaiian" in order to allow OHA to utilize ceded land assets to benefit persons who are not currently defined as native Hawaiians. This will diminish the trust assets available to native Hawaiians.

Despite the fact that the Attorney General of the State of Hawaii has notified OHA in writing of the illegality of their actions, OHA has determined to proceed with this plebiscite. These actions in and of themselves constitute a breach of OHA's fiduciary obligation to protect trust assets and utilize ceded trust revenues exclusively for Native Hawaiians.

We hereby request that the Senate Select Committee on Indian Affairs initiate a formal request to the United States Department of Justice for an investigation of this matter and to take necessary legal action to enjoin the Office of Hawaiian Affairs from taking any action to diminish the legal entitlements of native Hawaiians as defined in the Hawaiian Homes Commission Act of 1920.

We recommend that the Senate Select Committee on Indian Affairs designate staff and other resource persons and appropriate funds for them to meet regularly with us and other members of the Hawaiian community so that we can begin working jointly on Federal legislation which will address these concerns. Your prompt response is greatly appreciated.

I would like to say one other thing in closing, and that is that since we had last an opportunity to conference which was in August of 1987, we have worked very hard. We have increased our numbers by ten-fold. We take a count every three months. We have some 2,000 to 2,500 citizens enrolled and we anticipate that we will be at the 5,000 mark within a few months.

We meet regularly four times a year so that we can appraise every representative that comes to meet with us from all of the islands. Although Kaho'olawe is not seated, we do have an open door policy so that we can continue to work with them.

We would like very much to start off the process in a sensible way, and we feel that that way is to identify parties in the community, members of the Washington staff, and we need to sit down and kuka this matter.

I want to say that there is a possibility if the Senate Select Committee on Indian Affairs wants to consider a Commission, I guess we could talk about that, but our initial feeling at this time is that it is premature. There is a strong movement afoot to support a Native initiative for self-governance, but my feeling is that we need to have some involvement from the Senate Select Committee on Indian Affairs. We can't just be told to do it on our own, because we don't have the necessary expertise about Congress. What is practical? What is realistic in that environment, and how to deal with and approach the problem legally from the Congressional side.

But we are willing to work with anyone. We had a very good meeting with OHA trustees a few months ago. We are currently trying to get them to reassess their position on the plebiscite. Nevertheless, we need to make the record here regarding that and other matters, and we are hoping that you folks will find a way to appropriate some staff and some moneys to commence working with us down here. We would like to see something happen.

Thank you.

[Prepared statement of Ms. Trask appears in appendix.]

The Chairman. I thank you very much, Ms. Trask.

I have just checked with the chief of the Hawaiian section of the committee, Ms. McGregor, and she advises me that every communication received from your office has received a response.

Ms. Trask. Senator, I haven't really gotten anything on the Mahetsky and the Taylor memos. There was a lot of legal research, but I did not receive any communication. If there is some communication, I would like to get it now.

With regard to the standing to sue letter that I received from you, I did send back a response. That took a little while, because we had to discuss it, but we also did not receive anything back at that time.

I am here now. I haven't received a response. If you have one, I would like to get it.

The **Chairman**. What I just said was that everything we have received has had a response from this office. That is what they tell me.

Ms. **Trask**. Did you get a response from the office, or are you saying that we got a response? I did not get a response.

The **Chairman**. Every letter you wrote to us has been acknowledged and responded to.

Ms. **Trask**. I would like to now request for the record that I receive a copy of the response sent to me regarding the Taylor memo, the response sent to me regarding the Mahetsky memo, and the response sent to me regarding our request for standing to sue.

The **Chairman**. You shall receive them.

Now, I would like to ask a few questions. In your statement, and I am quoting, you are denied the "free exercise of our religion, culture, and language." Are you really denied free exercise of your language in Hawaii?

Dr. **Blaisdell**. The free exercise of our religion, culture, and language requires our lands. We are people of the land. It is not only the source of our physical sustenance but our spiritual essence. Without access to and control of our own lands, we are denied our religion.

The **Chairman**. So, it is in that context that you are saying you are denied.

Dr. **Blaisdell**. Indeed, and our exercise has been suppressed and continues to be suppressed.

The **Chairman**. You have indicated that OHA does not speak for Hawaiians. If that is the case, is there any one or any group that speaks for Hawaiians?

Dr. **Blaisdell**. One of the OHA trustees this morning, as I recall, said that their testimony represents only the majority view of the trustees of OHA. As I recall, she admitted their testimony does not reflect the view of all the Hawaiian people.

No single organization at this time does, because we have been pointedly, deliberately divided by those who have been in control of our lives and our lands. So, what we seek now is support from this committee and others, as Dr. Naleen Andrade said, so we can educate our people and begin to organize ourselves into a unified voice.

Ka Lāhui O Hawaii is one organization that has demonstrated that this is feasible. There are other organizations such as Nā 'Oiwi O Hawaii and Nā 'Ohana O Hawaii who similarly are establishing organizations, and we are meeting together. With appropriate education, time, and support from this committee and other leaders, we will be a united people to assert our sovereignty.

The **Chairman**. Then, you are suggesting that the constitutionally created organization called OHA does not represent the interests of Hawaiians?

Dr. **Blaisdell**. Yes; that is what I am saying. It is a State created agency and, therefore, it properly is concerned with State policies toward and for the Hawaiian people. We are asserting our sovereignty separate from the State government, separate from the Federal Government, to be created by the Hawaiian people, not by the State, not by the Federal Government, but by the Hawaiian people.

The **Chairman**. What form should self-determination take?

Dr. **Blaisdell**. As indicated in my testimony, it is up to the Hawaiian people to decide that, Senator, not non-Hawaiians, not any existing State or Federal agency. It is up to the Hawaiian people ourselves, and given your support, we will proceed.

The **Chairman**. How will that come about? Isn't OHA elected by citizens of Hawaiian ancestry?

Dr. **Blaisdell**. OHA trustees are elected by those citizens of Hawaiian ancestry who register and choose to vote. As you know, Senator, turnout in such elections has been very poor.

OHA is a State agency. It speaks to and for the State for some Hawaiians but does not speak for all of the Hawaiian people. We have to speak for ourselves.

Ms. **Trask**. Senator, I would like to make a brief response to that. The way that we are looking at is we have to acknowledge that this is 1988 and we have to have some decent relationship with the State and the Federal Government.

In looking at the Federal mode, you have the Federal Government as a whole. You have a specifically empowered Federal agency, the Bureau of Indian Affairs, that oversees governmental matters. In the third tier, you have the various Indian nations which exist separate from the State and the Federal Government.

By virtue of having these three entities, you are able to have government-to-government communications and to have procedures so that you can afford, as much as possible, the Indian tribes with self-determination.

In the Hawaii situation, what you have is the State of Hawaii. We have just recently created—I think eight years is recent—a specifically empowered State agency to look at State matters dealing with State policy, but the third tier has not really taken form. We are in the process of helping to shape that.

As far as the procedure for putting together the Hawaiian people, my feeling is that you have to support the democratic process. Many individual groups calling themselves nations have come up in the past, but they didn't take the step that needed to be taken. They didn't open themselves up and say it is time for us to get together and let's look at some fundamental documents of governance here.

I think that is one thing that Ka Lahui O Hawaii tried very hard to do when we worked in 1985 and 1986 to go statewide, to have our workshops, and then to have a constitutional convention, run an ad in the OHA newspaper, put it in the biennial edition of the stock bulletin. It was the year of the Hawaiians to get maximum information out there and just throw the doors open and say to Hawaiians and native Hawaiians come in here and let's work on fundamental documents.

As the process continues, there will have to be other constitutional conventions. There will have to be government-to-government discussions, not only with the State but with the Federal Government.

My feeling is that this is the way the rest of the United States of America seems to be proceeding. We are utilizing those democratic processes here in the State, and it seems to be the way that the native Hawaiian people want to go.

I was there at the constitutional convention. It was very interesting. It was a lot of work, but believe it or not, we had 250 delegates from every Hawaiian community in this State, and after 2 months, we were able to resolve some of these issues that have been plaguing us since 1893.

We are making a good beginning, but if we are really going to solidify this thing and do it right, we have to be flexible enough to allow the democratic process to work. That means things like legislative sessions, government-to-government meetings with the Senate select committee, and other constitutional conventions.

That is really sort of where we are, and that is why we structured the constitution to be flexible in that way. We are all interim, including myself as kia'aina. I have one more year left to go, but we are striving for a date when we can have enough capital to have a statewide election and proceed to really seat a full legislature for a 4-year term.

OHA is in a position in the State to be similar to the BIA, but I am sure you folks know some of the problems that the BIA has had as identified in the Arizona Republic articles that were recently published. There are serious problems there, but it doesn't stop on the Federal level with the United States and the BIA. It proceeds with 300-plus Indian nations and over 100 more waiting for Federal recognition.

We would like to try to approach it in the same way, and we feel that there somehow can be room made to accommodate us and include us in these Federal policies.

It is rough. It is the democratic process. It will take a few years.

The CHAIRMAN. How many enrolled members participated in the election of delegates to your convention?

Ms. TRASK. Actually, when you talk about the election of the delegates to the convention, we didn't have an enrollment until subsequent to the enacting of the constitution. What we did was we set out in 1985 and we went four rounds to every Hawaiian island with the exception of Niihau. We did not get access to Niihau, but we went out four times doing workshops.

The first was looking at the fundamental constitutional documents. We took out some words from the constitution, the State, the Federal Government's constitution. We returned with a draft of an ANA grant to get the community's response to that.

The last time we went out which was in 1986, we took out the State statutes relating to the State constitutional convention which had occurred in 1978, and then we met with leaders. We were operating under the auspices of the Native Hawaiian Land Trust Task Force at that time.

So, the best we could do was notify the Hawaiian Homestead Associations, go to every community, and then we ran the ads in the OHA newspaper and also in that special edition of the Year of the Hawaiian paper, and we thought we would get 60 or 70 people. We got 250 representatives. We had the election subsequent to the enacting of the constitution in March.

So, we didn't really have ourselves elections for delegates. We were not a nation at that time.

The **Chairman**. Dr. Andrade, has the recent action on the part of the Congress in appropriating a few dollars for Native Hawaiian health helped in your endeavors?

Dr. **Andrade**. Absolutely, but again I have to go back to one of my last statements, that of a band-aid approach. I think the reason why E Ola Mau has great respect for Ka Lahui Hawaii is because of the democratic process that they have embarked upon and because of their allowing different viewpoints to be expressed within their legislation and within their legislature.

The third reason is because they stress education. So often we hear of movements that say you guys have to follow us because we are right and we have to be united even if we have "to bust you up" in order to do it. But in Ka Lahui what is offered is a very informed approach.

Therefore, in terms of health legislation, when you want to correct health, you have to bring across the concept to people that you are worth saving, you are worth taking care of yourself, you have self-esteem, you have faith in who you are and what you do. That cannot come unless you have a firm base of your roots, of what you mean when you say I am a Hawaiian.

There are 50 different definitions of sovereignty out there, and what we find is that Ka Lahui is a mechanism to achieve sovereignty, and it is a mechanism within the framework of the American Constitution that supports this kind of development and growth and modeling for our people. That is why we support them.

We have also worked with other organizations such as OHA, because OHA is a very positive organization in the realm of expertise that they have. So, E Ola Mau's concept is that in health legislation, such endeavors as this where Hawaiians can be educated about what has happened, why it happened to us, and what we can do about it, must occur. Our people right now are enmeshed in the pain and suffering of what happened in 1893 and what is still happening today.

What E Ola Mau would like to do is take them beyond that, but we need a vehicle and we need a mechanism. What the Senate select committee can do by helping and supporting groups like Ka Lahui—I should say a nation like Ka Lahui, excuse me—is to recognize that Hawaiians are listened to, that we do have a voice, and that you will help us emancipate ourselves.

The **Chairman**. Ms. Trask, for the record, will you give us a translation of Ka Lahui Hawaii?

Ms. **Trask**. Sure. Our reason for choosing that name, Ka Lahui Hawaii, is that it really signifies the gathering of Hawaii. In the Hawaiian cultural tradition, we do not see ourselves as being separate from the land. So, to say that we are Hawaiian or terms like Hawaiiana are not appropriate, because when you ask a Hawaiian who they are, they will respond, He Hawaii'au, He Hawaii makou. I am Hawaii. Our people taken together are collectively Hawaii.

So, Ka Lahui Hawaii means the hui, the gathering of Hawaii. In taking that name, we speak not only for ourselves as human beings and for our government but for all of the other things that upon our land, our lands themselves, the pohaku, and all of the sentient beings that live upon these lands. These things also are Hawaii to us.

The **Chairman**. I thank you very much.

Ms. **Trask**. Thank you, Senator.

The **Chairman**. The hearing will stand in recess for 10 minutes.

[Recess taken.]

The **Chairman**. The hearing will please come to order.

Our next panel consists of members of the Na'au pono, Mr. Liko Martin of Honolulu, Mr. Edward Halcaloha Ayau of Molokai, Ms. Julie Cachola of Waianae, and Mr. Palikapu Dodman of Kau.

Ladies and gentlemen, welcome to the committee. Let's begin with the testimony of Mr. Martin.

STATEMENT OF LIKO MARTIN, HONOLULU, HI

Mr. **Martin**. Good morning, Mr. Chairman.

Mr. Chairman and members of the committee, distinguished guests, and participants at this hearing, this panel before you was formed by the participants at the recent Native Hawaiian Rights Conference, sponsored by the Office of Hawaiian Affairs, held on August 5, 6, and 7 at the Kamehameha Schools. By no means does this panel represent all the views on Hawaiian issues, nor is this an attempt to grandstand individual personalities. Rather, it is a sincere effort to present ideas and clarify facts as well as offer a formula for restoring Hawaiian sovereignty and independence.

Mr. Chairman, we recognize that Hawaiian issues are exceedingly complex historically, culturally, economically, and legally. Still, beyond the seemingly endless array of legal issues and varying interests, there are basic issues that need to be addressed.

Hawaiian organizations and their leaders have pursued many options to establish, define, and receive the basis entitlements provided in the State Constitution and in federally recognized programs and rights of native Americans.

Today, as a result of productive discussions and presentations at the well attended Native Hawaiian Rights Conference, we are presenting a comprehensive yet broad reform package that could assist the many Hawaiian organizations to work cooperatively. A five point plan was adopted at the conference in a resolution form after intensive discussion. We feel that this committee, in its concern for Hawaiians, may benefit from the guidelines and priorities that are identified in the framework of the resolution.

The five points in the plan could provide the basis for a cohesive and comprehensive strategy for coordinating and uniting the Hawaiian people and their respective organizations. The five point plan is an attempt to prioritize concerns related to sovereignty, land, cultural rejuvenation, and the restoration of Hawaiian pride and dignity.

Mr. Chairman, we view today's hearing as a new beginning and will look forward to discussing our proposal, along with other recommendations, with you and your staff in the upcoming months. The five guiding principles of the strategy for achieving Hawaiian restoration, as adopted by the resolution of the participants at the conference, are:

1. An apology by the United States Government to native Hawaiians and their government for the U.S. role in the coup of 1893;
2. A substantial land and natural resource base comprised of a reformed Hawaiian Homes program, a fair share of the ceded lands trust, the return of Kaho'olawe, and other appropriate lands;
3. Recognition of the native Hawaiian Government with sovereign authority over the territory within the land base;
4. The guarantees of substantial beach access; fishing, hunting and gathering rights; and protections for native Hawaiian religious practices and historic sites; and
5. An appropriate case payment.

Specifically, I shall begin and speak about the subject of the coup of 1893 and open a page out of the unchangeable past, offering a reclarification, if you will, for the present's sake, of Hawaiian history.

In 1893, the United States of America inherited the trust responsibilities and also the requirement of restoration to undo and make right the acts committee against Queen Lili'uokalani and the Hawaiian Nation. It is now 1988, and the Hawaiian people remain a nation without a homeland.

Throughout the 1970's and 1980's, the Hawaiians have striven to reestablish their sense of nationality and loyalty to cultural traditions and have acted with remarkable restraint, humility, and in good faith. Above all, they have carried themselves in the true spirit of aloha.

More than being native-born, they are the aboriginal descendants of this archipelago and are linked to an inherited indigenous culture with incontestible rights and authorities over the territories of the Hawaiian Islands.

Ninety-five years after the tragedy of 1893, the call for independence and sovereignty is still echoing in the streets and in the byways, through the courtrooms, and even as far away as the U.S. mainland and Geneva. The future destiny of Hawaiians can and should be in our hands.

Hawaiians have been told that their government was overthrown. That single misrepresentation of fact has left our people with a sense of shame and dishonor. The historical facts of the events in 1893 are quite to the contrary. In fact, Queen Lili'uokalani, in order to avoid bloodshed, formally abdicated until, as she put it, "the Government of the United States shall undo the action of its representatives and reinstate me in the authority which I claim as the constitutional sovereign of the Hawaiian Islands." How long will this misrepresentation be perpetrated?

Today, Hawaiians suffer from culture shock, and large portions of our population are alienated, incarcerated, and while many kupuna and makua are cancer ridden just for the lack of a good old taro patch and clean waters from which to gather fish.

As I am seeing it in my travels from ahupua'a to ahupua'a and from meeting to meeting, Hawaiians are being herded onto foreign and confining pastures and being forced to segregate and discriminate among themselves. What will the future hold for the thousands of Hawaiians who are active in the cultural renaissance?

Even if the Island of Kaho'olawe is returned, its sacredness and beauty has already been brutally defiled. So, let us not use Kaho'olawe as a scapegoat. We are calling for human respect and honor among those who have the power that they should recognize that now is the time to restore our lands and sovereignty.

The Congress of the United States should take a greater responsibility for its obligations. Reparations or restitution in the form of a cash payment is absolutely unacceptable to us. Rather, Congress should promptly proceed to make restoration of sovereignty and land in accordance with the five points that have already been mentioned.

Congress has the power to compensate Hawaiian natives under various constitutional provisions. Therefore, pursuing matters of compensation based on alleged wrongful acts in the U.S. Claims Court or by Congressional or Presidentially appointed commissions would be pointless. The majority report of the 1983 Native Hawaiian Study Commission already concluded, upon extensive investigation and in lieu of insufficient evidence, that the Hawaiian people are not entitled to reparations.

To review those past findings or attempt to inject new evidence and establish a legal claim would be, in my opinion, a frivolous action, side-stepping the real issue, that is, restoration of an independent national status to the Hawaiians and the return of and title to with autonomous authority over the lands that the United States received in treaty with the Republic of Hawaii in 1898 which have subsequently been transferred to the State of Hawaii. Congress should act directly without referring the issues either to the Claims Court or to a new commission.

I can offer only one other procedural method, that perhaps these matters of such solemn consequences could be formally attended to by a convened congress of Hawaiian people under the guidance of an international tribunal sanctioned by the United Nations and presided over by representatives of the World Court. At this point in time, any other remedial options may only add confusion and delay.

In closing, I would like to leave you with these thoughts. The acts in which we partake today will either liberate us or leave our future generations to continue in disregard, disrespect, and disgust. Do we lift the burden from the shoulders of our children, or do we bury them with our infirmity, ignorance, and neglect?

The opportunities to settle the questions of national restoration and recognition and the social inequities that we live with are before us now. In order for Hawaiian people and their culture to survive, we must coexist in a spirit of friendship with the all the nations and peoples of the world, each one being masters of their own destiny.

Mr. Chairman, I would like the members of this panel to introduce themselves and speak on the various points that I have brought out after which we would welcome questions. If it is all right with the chairman, I would like to play a short tune in keeping with some Hawaiian or indigenous protocol.

The **Chairman**. Please proceed.

[Prepared statement of Mr. Martin appears in appendix.]

Mr. **Martin**. This song, Mr. Chairman and participants here, was created shortly after the disappearance of George Kimo Mitchell in their travels to Kaho'olawe. Since the 1970's, I have traveled also extensively through Indian country and have just returned a few years ago to join my fellow people in resolving these matters:

I'm sailing over the ocean,
Just to ease my conscience,
And I heard something calling me back home.

How can I face the future,
If I were to lose my conscience,
And my sons will ask me, Daddy, what went on?

When they were falling upon Paradise,
Tourist ships tried to make it nice,
And the welfare lines that start at twice the price,
I'm trying not to get uptight.

Talking about a life,
Oh, what a life,
Back in the old times,
And singing for love of our land and a new life.

Something stopped the bombing of Jerusalem,
And a battleship ripped off Hawaii's kingdom,
And the USA is turning blue size grey,
Over Figuero.

But I can feel a change in the weather,
Something is going to pull this Nation together,
And save the stones of my grandfathers bones
That are naked and cold.

So, we are heading to the United Nations,
To get out all our frustrations,
'Cause we want peace and sandy white beaches
That we call home.

The CHAIRMAN. Thank you very much.

Mr. MARTIN. The second point that we mentioned in the five point plan was a substantial land and natural resource base comprised of a reformed Hawaiian Homes program and a fair share of the ceded lands trust, the return of Kaho'olawe and other appropriate lands. So, the speakers will address these points and introduce themselves as they speak.

STATEMENT OF JULIE-ANN CACHOLA, WAIANAE, HI

Mr. Chairman, members of the committee, and all the distinguished participants in this historic occasion, aloha. My name is Julie-Ann Cachola. I am a member of Na'au Pono. I moderated the sovereignty and self-determination panel at the Native Hawaiian Rights Conference at Kamehameha Schools on August 5-7, 1988.

Today, we are talking about a comprehensive strategy that will facilitate a unified direction for Hawaiian native policy. You have heard the overview of the strategy, and you have heard about the first focal point, the restoration of Hawaiian pride and dignity through a formal recognition of and apology for the illegal overthrow of our queen.

Plank 2 of the strategy addresses the critical need for a Hawaiian land base managed by a sovereign Hawaiian Government for the betterment of Hawaiian conditions. The facts about the lack of a Hawaiian land base have been stated relentlessly. I will not encumber this oral testimony with the available and known facts. I refer you to my written testimony and exhibits A, B, and C for this detailed information.

The administering of a Hawaiian land base, the specifics in terms of methods, procedures, rules, regs, and jurisdiction are not addressed here. These historically divisive factors can and will be worked out among various Hawaiian organizations and interest groups. What is needed now is a substantial land and natural resources base comprised of a reformed Hawaiian Homelands program, a fair share of the ceded lands trust, the return of Kaho'olawe, and any other appropriate lands. These lands have long been a focal point for grievance and, ultimately, restoration and restitution.

A land base has been and continues to be the physical and spiritual center for the Hawaiian people. Social and economic indices of Hawaiians demonstrate the impact of alienation from a land base. This alienation has ripped through our people, our families, and our communities.

In our culture, the land defines the people, and the people define the land. Without the land base, culture remains abstract and passive. A living, active culture, one that can rejuvenate Hawaiian identity and pride, requires an accessible land base. Culture and traditions need to be exercised, they need to be practiced, but this, again, requires the physical focal point of a Hawaiian land base.

The need for reform of the Hawaiian Homelands program is clear. As you know, in 1921, Congress passed the Hawaiian Homes Commission Act of 1920 which set aside approximately 200,000 acres of lands for residential, pastoral, and agricultural homesteading to be administered by the Hawaiian Homes Commission. The intent of Congress was to promote the rehabilitation of Native Hawaiians.

With neither sufficient natural resources to sustain agricultural or pastoral activities on these lands nor the financial commitment by the Federal and State governments to aggressively place Native Hawaiians on homesteads, the program has predictably suffered a dismal track record. Relatively few of the estimated 40,000 Native Hawaiians have been placed on trust lands. In the 68 years of the program, the Hawaiian Homes Commission has awarded 1,500 leases. Of the 1,500, only 3,700 of those leases have actually resulted in land settlement and homesteading.

This amount translates into a mere 17.5 percent of the total acreage set aside for the program. Meanwhile, the waiting list grows, along with high hopes of returning to the land.

In contrast, however, the Use of Hawaiian Homelands by non-beneficiaries has been very active. Nearly 100,000 acres of trust lands have been used for commercial, industrial, and public uses. This is three times the amount of land that is used by Native Hawaiian beneficiaries, comprising 61 percent of the entire Hawaiian Homeland inventory.

The reason for this non-beneficiary use, of course, is because of a lack of appropriate capital for the development of infrastructure and other land improvement needs. However, upon closer inspection, we find that substantial revenue generation has not occurred.

Sixty-one percent of the land base has generated $1.7 million in revenues which averages out to less than $18 per acre per year. Furthermore, virtually all of these revenues go to the Department of Hawaiian Homelands to pay for administrative costs rather than for direct beneficiary assistance, infrastructure development, and homestead improvements.

There is common recognition of the problems that plague Hawaiian Homelands, and many studies, plans, and recommendations have been offered. The bottom line is that rehabilitation, homesteading, and the basic objective of returning Hawaiians to their land base has not occurred. Even substantial revenue generation has not occurred.

Members of this committee should remember that the State of Hawaii accepted the responsibility to administer the Hawaiian Homes Trust as a condition of statehood. The record is clear. It has failed to live up to this condition after 29 years of statehood.

What this means is that the State should no longer be allowed to assert its sovereignty over a land base which Hawaiians should manage and control. Congress should not allow this breach of statehood to continue.

The other ceded lands trust is identified in section 5 of the Admissions Act as amended by the 1978 Constitutional Convention. As you know, the Office of Hawaiian Affairs administers programs funded by a portion of the revenues from the ceded lands trust. However, the trust does not constitute a land base. It is currently only a revenue base. Furthermore, there are many unresolved issues that restrict revenues allocated to the Office of Hawaiian Affairs for the betterment of Native Hawaiian conditions.

These major issues have not been resolved by the State judiciary and have yet to be adequately handled by the State legislature. Members of this committee should also note that the resolution of these issues is beyond the control of Hawaiians.

The interests and stakes involved are high. Economic obstacles and current land uses prevent decision makers from fairly administering the trust for the betterment of Hawaiians. Hawaiians must be given the power of administering their own land base and resolving problems related to that land base.

Another land base that is particularly significant to Hawaiians is the Island of Kaho'olawe. The issues and facts surrounding Kaho'olawe have been presented for many years now. The cultural and historical significance of the island, the consent decree, the tireless efforts of Protect Kaho'olawe Ohana to manage Kaho'olawe as stewards of the land are all presented in exhibit C.

Today, the time is right for the return of Kaho'olawe to the Hawaiians. The Governor has pledged to seek the return of Kaho'olawe to the State. The Mayor of the County of Maui is also committed to seek the return of the island to the State. The State Department of Land and Natural Resources has committed $75,000 to conduct a study of Kaho'olawe.

Furthermore, results of a recent poll conducted by the Honolulu Advertizer and KTN TV indicate increased public support for stopping the bombing. Fifty-six percent of those surveyed are in favor of stopping the bombing and returning the island to the State.

These executive, legislative, and public sentiments demonstrate the concern and merit at this significant time in history for the return of Kaho'olawe to the State of Hawaii.

Mr. Chairman, the time is right for the pioneering of a comprehensive package of unrefutable unifying principles for the Hawaiian people, starting with the restoration of Hawaiian pride and dignity and the establishment of a substantial Hawaiian land base. The State has had its chance to rehabilitate the Hawaiian people. The Congress must now give Hawaiians the chance to fulfill their own destinies.

We stand prepared as professionals, as educated and well-learned Hawaiians, to be ready for the significant historical threshold of unification. We ask that through the assistance of your committee that Congress conduct more hearings and staff discussion to specify the five points of the strategy and identify specific steps toward language.

Secondly, in terms of the land base, we specifically ask that this committee advocate a comprehensive inventory of the Hawaiian land trust not only in terms of metes and bounds but in terms of what resources lie where and to conduct a study on the economic and social needs of the Hawaiian people in terms of acreage, in terms of land and land uses.

Lastly, of course, we hope that this will result in the introduction of legislation that embodies those five points.

Mahalo.

[Prepared statement of Ms. Cachola appears in appendix.]

STATEMENT OF EDWARD HALEALOHA AYAU, MOLOKAI, HI

Mr. AYAU. Mr. Chairman, members of the committee, Kia 'Aina Mililani Trask, Trustees of the Office of Hawaiian Affairs, ka po'e Hawaii, aloha kakou. My name is Edward Halealoha Ayau. I am a Hawaiian from Molokai, land of Hina and Lanikaula. I am a third-year law student at the University of Colorado where I am co-president of the Native American Law Students Association. I am also a law clerk at the Boulder office of the Native American Rights Fund.

As a Hawaiian, I am deeply committed to two very mutual principles, first, the restoration of Hawaiian sovereign authority; and, second, aloha 'aina, love for this land. As we all know, both principles go hand in hand, as the Hawaiian embodies the timeless beauty of these islands. Regretfully, that very beauty was scarred by the events of 1893 whereby the Hawaiian sovereign government was wrongfully overthrown.

It is said that a structure built on a faulty foundation will ultimately fall. American authority in Hawaii was wrongfully established against the very will of Hawaii's reigning sovereign. We all know this. That is why we are here.

Principles of justice dictate that an equitable solution be found where an injustice exists, for, surely, a wrong is not made right simply due to the passage of time. It is in this breath that I wish to share my mana'o on the topic of restoration of Hawaiian sovereignty and land. I cannot begin to emphasize the importance of the term "restoration."

Restoration of Hawaiian authority and land has happened once already. On February 10, 1843, Kamehameha III was forced to yield the Kingdom of Hawaii, under protest, to the British. Kauikeaouli appealed to Queen Victoria. On July 31, 1843, the sovereignty of Hawaii was restored when Admiral Thomas declared Kamehameha III to be the independent sovereign, whereupon the King uttered the immortal words, "Ua mau ke 'ea o ka 'aina i ka pono," the life of this land is perpetuated in righteousness.

However, 50 years later, Lili'uokalani was dethroned by U.S. citizens residing in the Hawaiian Kingdom upon the urging of a United States minister and use of the United States military. Like Kauikeaouli, Lili'uokalani also yielded under protest.

Since 1893, Hawaiians and non-Hawaiian have not fully embraced the notion that the life of the land was fully embodied in the concept of 'ea, sovereignty, and was maintained through pono, rightness in its purest sense. It is in light of this rightness that England restored and formally recognized the 'ea and ku'oko'a, independence of Ka Lahui Hawaii. England took five short months to realize the truth. In 1983, the majority report of the Native Hawaiian Study Commission ignored the truth, but the truth speaks for itself, and to know the truth is to finally become free.

One argument to be made for restoration of Hawaiian sovereignty and land is that the Hawaiian government had entered into numerous treaties and conventions with other nations. In fact the monarchy signed at least five treaties with the United States alone. Implicitly recognized is the sovereign authority of the Hawaiian government since treaties are agreements between two sovereign entities. In other words, if the United Nations had existed in 1893, Ka Lahui O Hawaii would have had a seat in the Assembly.

Yet, we must be aware that restoration of Hawaiian sovereign authority is by no means the answer to all the social, political, and economic problems that plague Hawaiians, but it is the beginning to something we Hawaiians have known all along—that as the first inhabitants of these islands, united under a single government, we exhibited the attributes of nationhood.

With an autonomous governmental structure independent of State influence, Hawaiians will finally be able to exact the level of control over their affairs that the Department of Hawaiian Home Lands and the Office of Hawaiian Affairs never and will never have. Conflict of interest questions will always arise when a State authority, with responsibilities to all its citizens, has jurisdiction and the power of the purse over native people.

The time has come for the United States to fully embrace 'ea, the birthright of all Hawaiians. This is not a radical doctrine but, rather, a simple legal recognition of the existence of and honest desire for local self-determination.

There have been numerous examples of the exercise of self-determination by local Hawaiians. Yet, due to lack of formal recognition, reaction by State and local authorities was swift and often violent. For example, Hawaiians protested the eviction of George Santos and other tenants of Kalama Valley by the Bishop Estate and were arrested. Hawaiians protested the lack of rent payment for Hilo Airport located on 5(f) lands and were arrested. George Helm and Kimo Mitchell died from protesting the bombing of Kaho'olawe. Homeless Hawaiians living on Waimanalo Beach were arrested and evicted. Whether these Hawaiians knew it or not, they were making the strongest sovereign claim, because the authority upon which these events were based is Hawaiian sovereignty.

If the sovereignty of Hawaiians had never been stolen, these regretful events would never have occurred, but they did, and we Hawaiians live with the responsibility of never allowing such events to happen again. I asked Charles Wilkinson what it would take to united Hawaiians, and he responded with two simple words, "a crisis." In view of the foregoing events, Hawaiians already live in constant crisis.

Mr. Chairman, presently, Hawaiian sovereignty is being exercised day-to-day in more intangible ways. In Ka'u, Hawaiians fish for 'opelu; At Maku, Hawaiians pick 'opihi; at Aha'ino, Hanapi kane carves milo in the images of dreams while Hanapi wahine picks limu for the evening meal; at Ke'anae, Hawaiians huki kalo and work the lo'i; and when the Makali'i rises, Protect Kaho'olawe 'Ohana members begin preparation for the upcoming makahiki season. Each of these personal and community acts is a profound expression of self-determination and of cultural individuality.

Broken down, restoration of Hawaiian sovereign authority and lands really stands for meaningful choices. The right to choose to remain a part of the larger society or to pursue a grassroots life style is a Hawaiian's by birth.

Lili'uokalani left us here legacy, and present day Hawaiian leaders have inherited the historic responsibility of looking after the needs of the Hawaiian people. The sovereignty Lili'uokalani yielded under protest must be fully restored. Only then will here spirit be put to rest and the life of the land again be perpetuated in righteousness. The Hawaiian Islands will again be beautiful. Ua mau ke 'ea o ka 'aina i ka pono.

Mahalo.

[Prepared statement of Mr. Ayau appears in appendix:]

The CHAIRMAN. Thank you very much, Mr. Ayau.

Mr. Dodman.

STATEMENT OF PALIKAPU DODMAN, KA'U, HI

Mr. DODMAN. Good morning, everybody. Aloha.

I can only speak as a native Hawaiian who has been brought up in cultural traditions, as one who has been burdened by the State and the county and Federal systems.

Senator Inouye, I am sure you remember the geothermal problems we had on the Big Island. We had to run an advertisement nationwide to look for support beyond the reach of Hawaii.

As a plaintiff in that case, I saw county policies and procedures put down our claims as native Hawaiians on religion and saw that the State may be corrupt and saw the court systems and a religious belief ended, because it is ongoing within the families, but when the court system in Hawaii—the U.S. Supreme Court for the first time in its history dealt with a religious case but did not consult religious advice and renounced the religion.

I look at fishing where our resources and our life style have been jeopardized by the Department of Land and Natural Resources making laws about our fish that limit our life style. It is pollution and over-commercialization that has caused the depletion of fish, not Hawaiians, but we suffer the burden with everybody else.

I am not reading from a piece of paper. I was supposed to. It is hard to express what I went through without getting hostile, because I was a direct victim and not a piece of paper but a direct victim in this situation of Hawaiian claims.

I am a veteran of 3 years' service of the Vietnam era and honorably discharged. I did not fight for my religion to be dragged into courts and denounced. I thought I fought for the freedom of my religion. I did not fight for New York City or Chicago. I fought for Hawaii, honorably, and I expected some respect when I came home from that duty as well as for all the other brothers who fought for their belief in their religion.

I see that there will be no answer for us Hawaiians. The system and the county and the State do not look out for our benefits. OHA does not. They have not protected my rights in the court system. They have not protected my rights in fishing. They have not protected my rights even on Hawaiian homelands problems.

I am just saying that with all I have heard today, health and education in the United States is a given. Sovereignty and the rights to our destiny and our future is what we need.

We cannot gain in these court systems and this situation as it is now. We need our own sovereign nation to discuss and take care of ourselves. If that is not shown in these times, I don't know what else we could show the next generation. If there is humbleness in the court system, then the court system has to show it, because our children will not go to the court system if it is just running them through a formality.

We need to determine our own future as Indians do. I know we are a strategic location in the Pacific. I think we deserve more than anybody else. We have already proven in 1941 that we are a target. It is not we Hawaiians who suffer or who created that predicament for everybody else, but it is we who seem to be bailing everybody else out of their so-called future problems.

I am saying that we need our own nation, because this system will not work and our children will not follow our steps in this system if we stop using it. That is my plea.

Thank you very much.

The CHAIRMAN. Thank you.

Mr. MARTIN. Mr. Chairman, we have one other speaker who would like to speak briefly before we are finished.

The CHAIRMAN. Fine.

Mr. MARTIN. Thank you.

STATEMENT OF IRENE KAIWAHINE KAEO NIAU MAYNARD, WAIANAE, HI

Ms. MAYNARD. My name is Irene Kaiwahine Kaeo Niau Maynard. I would like to acknowledge Mililani Trask, our kia 'aina.

Mr. Inouye and committee members, I was born on the Island of Kauai, raised on the Island of Oahu, and reside at Kamaileunu, Waianae. I am happy to be here this day of August 26, 1988, and I am proud to be a descendant of Ka Lahui Hawaii.

We, the native Hawaiian blood quantum of our descendants, are the traditional rightful legal occupants, users of the land, water, sea, mineral, and all resources as farmers, fishermen, hunters, manufacturers, miners, tradesmen, and professional residents to nurture Native Hawaiian people of the Hawaiian archipelago.

We the native Hawaiians and our ancestors inhabited and occupied this archipelago, exercised our traditional religion and access rights since time immemorial to sustain and maintain our culture and primordial interests under the interim government of Ka Lahui Hawaii exercising jurisdiction over the Hawaiian archipelago.

Our sacred Queen Keopuolani, at her death bed on September 15, 1823, expressed to Kamehameha II, "take care of these lands that belonged to and were received from your father, Kamehameha I. Exercise a tender care over your native Hawaiian people." Kamehameha II reaffirmed the Hawaiian people of governance since time immemorial, "Ua mau ke ea o ka aina I ka pono," the life of the land is perpetuated in righteousness.

On August 19, 1850, the Nation of Hawaii and Kamehameha III entered into a Treaty of Peace and Amity with the commerce and navigation by conspiracy from the United States of America, declaring perpetual force against native Hawaiian people. The United States of America recognized the Native Hawaiians and stole their lands.

1. The Hawaiian Homes Commission Act of 1920, July 9, 1921, 42 Stat. 108, Chapter 42, as amended.

2. Act of March 18, 1959, Public Law 86-3, 73 Stat. 4.

3. The State of Hawaii Admissions Act of 1959, Public Law 86-3, 73 State. 4, Sec. 5(f). This was created for the betterment of conditions of our people.

4. The two public trust lands are the native Hawaiian Land Trust and the Public Land Trust. These belong to the native Hawaiian people, their heirs and their beneficiaries.

Now, we the native Hawaiians, adopt this constitution for the Nation of Hawaii to exercise the right of self-determination, to build a nation, to establish our traditions before an orderly and representative interim government, to provide for the citizenship, promote the welfare of our Native Hawaiians and children, exercise our rights of home rule, secure the blessings of freedom and liberty, develop our trust and resources, conserve our trust assets, and dedicate ourselves and the Hawaiian Nation to disarmament and peace with absolute faith in equity and justice.

Mahalo.

[Prepared statement of Ms. Maynard appears in appendix:]

The CHAIRMAN. Ms. Cachola, what do you mean by a reformed Hawaiian Homelands program?

Ms. CACHOLA. What I cited to you were known facts about the problems that plague the Hawaiian Homelands program. This time, we are talking about a conceptually unifying package and strategy that Hawaiians can use.

The specifics in terms of, again, the rules, regulations, procedures, and jurisdictions, that sort of thing, need to be worked out at a later date, and we want to be working in conjunction with your staff with staff discussions.

The CHAIRMAN. I am certain you know that we cannot force the State of Hawaii to give up any lands to any person or entity. Do you expect Federal legislation forcing that?

Ms. CACHOLA. The powers of Congress are very powerful.

The CHAIRMAN. Not that powerful.

Ms. CACHOLA. But we not talking about telling the State of Hawaii to return land to individuals. Perhaps I am not understanding your question.

The CHAIRMAN. What are your thoughts on who represents the voice of Hawaiians? The constitution created OHA, and persons of Hawaiian ancestry elect the trustees. Many witnesses have suggested that these trustees do not in any way speak for Hawaiians. Is that your thought, too?

Ms. CACHOLA. I wouldn't say that those are our personal thoughts. However, the election of trustees occurs for people who are registered to vote and choose to vote on the day of elections. This has always been a problem in the divisive factions to elect a unifying group with the lack of a leader and lack of someone or an entity that Hawaiians can rally around.

This is divide and conquer. We know about that. What we are talking about now is a point for unification, a rallying point, moving in common to the highest level of abstraction so that we can include all of these elements.

What happened at the Native Hawaiian Rights Conference earlier this month was that I was surprised to see the broad representation of Hawaiian organizations that attended this conference. We rolled up our sleeves and decided, okay, let's look at all the different presentations for sovereignty and self-determination, but after that, let's look at the common elements and not just solidify the differences among our various organizations but to say, okay, all of that aside, what are the common rallying points.

Adopted by resolution at this conference which was well attended is the five point plan and strategy that we present today.

The CHAIRMAN. As you know, in the manifestation of sovereignty among Indians, Indians have exercised control over the use of their lands. They have been authorized to establish certain types of laws to control crime such as misdemeanors.

In your concept of sovereignty, are we physically setting aside a portion of Hawaii to be looked upon as sovereign lands belonging to Hawaiians?

Ms. CACHOLA. I will answer that first and then anyone can follow up.

We are talking about the management of these lands. We are not displacing people. We are talking about management and control as any other manager or steward of the lands. Furthermore, these lands are set aside as a condition of statehood for the rehabilitation of Native Hawaiians, and we basically want that implemented.

The CHAIRMAN. Are these lands to be managed subject to the laws of Hawaii and the United States?

Ms. CACHOLA. Again, these kinds of specifics——

The CHAIRMAN. It is a very important question of sovereignty.

Mr. AYAU. Mr. Chairman, having worked with American Indians at the Native American Rights Fund, the first thing that pops up in my mind is that in the great Navajo Nation, Navajos exert chief control over their reservation. They are the largest tribe in the United States. They have a Department of Justice. They have a tribal court system. They exert authority over their lands which make up their reservation.

So, in light of this, if sovereignty means just what it means, self-determination, then I would say yes, Hawaiians would have a land base and the laws of Ka Lahui Hawaii would control there. Of course, the tribes don't have plenary power themselves. It is subject to the plenary power of Congress.

That, like Julie said, is something that has to be worked out in a comprehensive Federal legislation, but as far as whether the laws of Ka Lahui Hawaii will have authority on a Hawaiian land base, yes.

The CHAIRMAN. Mr. Dodman, you have maintained that in order to practice your religion, lands must be returned to the Native Hawaiians. Is that correct?

Mr. DODMAN. I would say a lot of it has to do with that, because then we could determine how our religion should be practiced. The way it is now, the State agencies determine how we practice religion. They have us prove burden if they have made a wrong judgment. They tell us how it should be or if we should have it or not.

I say our sovereignty on our own lands, yes. We could call all the shots and how it should be for seven generations in the future on religion which deals a lot with gathering.

The CHAIRMAN. Is it your combined testimony that the Hawaiian Homes Commission is not responsive to Native Hawaiians?

Mr. DODMAN. I would say so.

Ms. CACHOLA. I think there are many problems that plague the commission. We are talking about funding. We are talking about having their arms and legs tied behind their chairs because they lack the resources to develop their own public works. They develop their own sewage treatment plants. They develop their own roads.

It is quite unreasonable given that no revenue is provided for that. So, it is not to blame the commission per se, but it is a programmatic problem

Mr. MARTIN. Recently, Hawaiian Homes just went to court on five plaintiffs, all kupunas in Keaau on a boat ramp. The State was saying that they have a right to lease it out to DOT, a non-Hawaiian agency. The boat ramp is a strategic waterfront right on the Hawaiian homelands at South Point. It would be like the Indians giving away the salmon at the mouth of their river for the economic beginning of their land, and that is how we felt, that Hawaiian Homes is wrong and the State is wrong for leasing out our lands and not looking at our interests and rights to it.

We are the beneficiaries of the administrators, but our claims don't seem to count.

Mr. AYAU. Mr. Chairman, I would like to comment briefly on the representation issue you have asked. I don't think we challenge or question whether the Office of Hawaiian Affairs represents Hawaiians or Ka Lahui represents Hawaiians. I think the real issue here is having complete authority to implement the resources.

As a State agency, the Office of Hawaiian Affairs may represent Hawaiians, but they cannot implement taking care of Hawaiians fully. Like she said, their hands are tied in terms of funding.

The resources should be under the authority of the government that will implement or take care of the needs of the people. The

Office of Hawaiian Affairs is at the State level. I would want to see them at a national level where they would not have to go through a State legislature and ask them for funding in order to implement their purposes. They should have authority over these resources and then determine how best to implement and to put to use these resources to take care of the Hawaiian people. I think that is what this is really about.

The **Chairman**. Ladies and gentlemen of Na au pono, I thank you very much for your testimony. It has been most helpful.

Our next panel consists of Mr. Louis Agard, Chairman of the Coordinating Committee to Address Reparations of the Council of Hawaiian Organizations; and Mr. Hayden Burgess, Director of the World Council of Indigenous People.

Mr. Agard, we will begin with your testimony.

STATEMENT OF LOUIS AGARD, CHAIRMAN, COORDINATING COMMITTEE TO ADDRESS REPARATIONS, COUNCIL OF HAWAIIAN ORGANIZATIONS

Mr. **Agard**. Thank you, Mr. Chairman.

Senator Inouye, distinguished staff, Mr. Parker, Ms. Zell, and Ms. McGregor, we appreciate the opportunity to appear before you to review some of the options that were circulated in the public.

Of the three options being discussed, we would like to narrow down our discussion as much as possible so as to not wander too far off the subject. What is stressed, in the opinion of our group, the Council of Hawaiian Organizations, is that we understand the three proposals are for reparations, and we don't read anything else into the proposals. That is very important to distinguish, because it will determine how far we support any action which has been proposed.

Relative to the proposals, we feel that a preferable option would be to introduce a concurrent resolution to establish a Congressionally appointed commission to study the historical events surrounding the overthrow. That is because our experience with the past study commission which we responded to in detail overlooked so many things. We feel the composition of that commission was unfortunate. We had six mid-level Federal Government employees.

Admittedly, they did not have a sufficient budget. As a matter of fact, that whole commission was under-funded to some extent.

We feel that Congress which has native American constituencies would be more responsive to the problem that is confronting us as native Hawaiians. They would be more responsible in making the decision. We think that the mid-level government employees were just following government policy as put out by the Administration and was a very partisan undertaking, we felt.

The second option would be, of course, considering the Claims Court, but that is a very spooky option, because it is so final, and we felt that didn't deserve top consideration.

The third would be another study commission, but in listening to the Senator's remarks here that we might be obliged to take another study commission to refute the original Presidential study commission, that would require review and another evaluation of our position and choice.

However, so far, that would be the choice, the appointed group. It would offer, I guess, the largest and quickest and least expensive but decisive action which is what we are looking for.

The community is tired of hearing after hearing. I believe you explained it adequately, Senator, that this is not the end, and it would be down the road in the future, but so many people are frustrated and want some of our people to come forth and vent their frustrations at this type of hearing.

I think we could explain what the Council of Hawaiian Organizations is. It is comprised of a group of representatives from several organizations. We had our beginning in about 1964 when the legislature considered the Maryland Land Law. Of course, we opposed that, because it was a combination of what we felt would be seizing lands again, the continual attrition of resources that were providing funds to educate children of Hawaiian ancestry. Eventually, the State Legislature passed it in 1967 and then it laid around for a long time and then they put it in place and started to implement it.

The problem with something like the Maryland law for many Hawaiians is that the preamble of the bill would state that this is the American dream, that everybody wanted to own a home and, of course, they were entitled to it. By doing this, it would create more housing.

Well, it didn't create any more housing. They just sold the houses that were there already being used. Today, it has gone from the American dream to the foreign dream, because valuable lands have been conveyed for, let's say, $1 million which are now being sold for $14 million, and it is being sold by the Bishop Estate involuntarily.

That hurts all of us. The average cost of a house in Hawaii, as I guess everybody knows, is $186,000. That works out to $10.18 per square foot. This is what is going to affect Native Hawaiians. They won't be able to afford housing now or in the future.

This brings up the issue that we discussed earlier here or has been brought up several times, the issue of sovereignty. I think the Native Hawaiian is backed into a corner. He has very little place to go, facing what he is going to face down the road with his children when he can't afford to live in his home. I think that is a tragedy.

If sovereignty means the ownership and exclusive management of Native lands, then this is the road that they have to take. They have no option. They will be overwhelmed. They have been overwhelmed, and they are continually being overwhelmed.

I hope people can understand that frustration. They are powerless to hold back this tide, and it is a full on operation at the present time.

On the issue that the options propose, who is to receive reparations? This is a very contentious one, and I think it really raises problems in our community, and that is why we haven't been able to come together.

I know that the Office of Hawaiian Affairs was theoretically created to receive reparations. Facing that fact, I believe that the treasury that was seized by the coup of 1893—in our discussions, we felt that the seizing of that treasury initiated the problems for

Native Hawaiians. They had control of it. They had 14,000 registered voters at the last election and 9,000 of those who voted in that election were native Hawaiians.

They controlled the treasury of this original State of Hawaii. With the loss of that treasury, of course, they are unable to determine their priorities which they would have been able to determine. They are being denied this all the time.

So, a treasury, to me and our group, would be a reasonable avenue to recreate for OHA and for Hawaiian Homes. If we are talking only about reparations for acts of war as described by President Cleveland, that brings up the subject of possibly a fourth option, the option being—which may be included in the first three—but the option is that the Native Hawaiian community case would be advanced or advantageously presented if we looked at President Cleveland's declaration to the Congress in 1893 where he cites that the acts of war were committed against the Native Hawaiian people and, therefore, they are due reparations.

I think that was never explored thoroughly, and that should be. Those kinds of things were glossed over in the commission report.

The Senate's own Congressional Research Service report of 1973, I believe, is also a very instrumental or important document that should be included in these types of reviews.

Of course, the last reason of three reasons for the fourth option would be the U.S. House of Representatives' concurrent resolution which some people might be familiar with. After the overthrow occurred, the House considered the resolution about the activity in Hawaii, and the House voted that the U.S. minister performed improperly by intervening in the governmental affairs of the native Hawaiian Government, and that same act of January 17 placed a protectorate over the Kingdom of Hawaii.

President Cleveland then had the protectorate removed, withdrew the minister, and issued the statement about reparations.

Those three actions are positive actions for Native Hawaiians. These are the issues that a Congressional group should be looking at. These are the actions that they should be looking at.

If the actions of one President, for instance, are the actions of all Presidents, then President Cleveland's actions are something that I think have to be acted upon. It has not been acted upon. It is more or less left open-ended.

He, of course, appointed Senator John Morgan of, I believe, Louisiana to chair the investigation in 1894 that found only the Queen guilty of overthrowing herself. That is hard to imagine, that the Queen landed troops and overthrew herself. I don't believe that, but this is what they tell us.

So, these actions—we have to look at the actions that are the actions of all Presidents for the Native Hawaiian people. I would hope that you would look at staffers to devise the proper method to look at those three types of positive actions when we go back to the Congress with whatever type of option we select, that that would be the consideration, mindful again that I hope we are only talking reparations or acts of war committed against Native Hawaiians in 1893 that subjugated them for seven years up until annexation in 1900.

They were unable to vote for annexation. The Constitution of 1894 in Article 32 actively promoted annexation, and the majority of the voters, 9,000 native Hawaiians, weren't even asked if they agreed. Therefore, we know what took place.

Those oversights are extremely unfortunate, and I hope that we can address those.

There is much more I would like to comment on, but relative to how the benefits will be broken down into the Hawaiian community, I think there are several formulas. The basic approach to this is we would like to select that first option, and it would be modified by the three actions, hopefully, that have been recited, that there be a treasury created for OHA and Hawaiian Homes.

Now, that takes care of two oversights. One is although the Congress created the Hawaiian Homes Act in 1920, they never funded it really, and the State created board by the constitutional amendment in 1978 was OHA, and we have a problem there with funding also. Twenty percent of the ceded land income is for OHA, but as I recall, their only income is about roughly $1.3 million a year, hardly enough to do very much. Therefore, I think we need to use fresh data that they are unable to do something that would benefit a lot of people, and this is where I think reparations go on a per capita basis.

I will make copies of my testimony for you, because there are some details in my testimony which are nitty-gritty, and I think they require more discussion at this time, but these are the things that we would like to do. We have been involved in following the reparations issue since the time began in 1974, and we have tried to respond with keeping information funneled through your office, and we will continue to do so.

We appreciate the efforts, and we look forward to something very fruitful in the near future.

Thank you very much.

Mahalo.

[Prepared statement of Mr. Agard appears in appendix.]

The CHAIRMAN. Thank you.

I would like to assure all witnesses that your prepared statements will be made part of the record in their entirety. So, even if you did give extemporaneous testimony, we will include both testimonies in the record.

Mr. Burgess.

STATEMENT OF HAYDEN BURGESS, DIRECTOR, WORLD COUNCIL OF INDIGENOUS PEOPLE

Mr. BURGESS. Ano 'ai me ke aloha. Greetings in the spirit of aloha to everyone.

My indigenous name is Poka Laenui, and I am a Hawaiian citizen.

First, I want to apologize to everyone in back of me for facing my back to them. Second, I would like to point out that I have already submitted written testimony to the Senator's staff.

THE CHAIRMAN. It will be made part of the record.

Mr. BURGESS. Thank you.

I point that out because I don't want to go into all of the details that I have contained in that written testimony. However, I think it is very important to note the caveat at the very beginning of that testimony in which I point out that a question of culpability and appropriate response for the Americans' involvement in Hawaii in 1893 is not really a question that is appropriate for the exclusive decision of the U.S. Congress. Should we allow that to happen, essentially what we would be doing is allowing a thief to sit in judgment of itself.

What happened back in 1893 was an attack by one independent nation upon another independent nation. That attacking nation has since occupied that independent nation. To allow that attacking nation to now decide whether or not it is guilty and, if it is guilty of breaking international law, what the appropriate remedy should be is clear idiocy.

Secondly, I would like to point out that when you deal with a question of reparation or restitution or restoration and all of these questions, essentially what you are talking about is the idea of how we make right what we know has been wrong. But what happens is that we continually refer to an American system of decisionmaking or of problem resolution.

Consider, for example, the possibility of looking at the Hawaiian system of dispute resolution called ho'oponopono. When you address a person who is accused of stealing, you do not let that person who has been accused make the decision, but both of you come before a third and impartial person to lay your case before them and try to resolve that question.

I would submit that that would be the appropriate resolution mechanism rather than all these things talking about reparation and the rest.

Now, I have been somewhat involved in the international arena, and I should point out that there is a regional organization called the Pacific Region of the World Council of Indigenous Peoples that has already adopted a resolution calling for an impartial international commission to investigate and, hopefully, assist in bringing about the resolution of this problem.

The World Council of Indigenous Peoples, another organization which is not only regional but an international organization, has also adopted the same resolution.

Another organization, the Law Association of Asia and the Western Pacific, was also presented with such a resolution and had considered it, but no action had been taken.

The United Nations Working Group on Indigenous Populations has also received a very similar resolution which I personally presented to them in 1985.

So, there is at least some movement going on in the international scene calling for attention to what had happened in Hawaii.

The final part of that caveat is this, that I appear here not conceding that this committee or the United States has jurisdiction to resolve this question but in the belief that a resort to arms is never justified until an appeal to reason has been exhausted. I come before you in hopes of appealing to your reason to place this question in the appropriate context.

I would like to also point out that my ancestors had a very refined ability, and that ability was to create gods and godesses out of stone, out of trees, and the rest. That was not because they were magicians but because they understood a very important quality in the human being, that you can transfer this power to other objects, this mana, this personal power—to another object simply by praying to it and by placing it above you and giving it the authority to rule over you.

When the missionaries came, they said this is no good, change your religion, and many of us did. But what we see now happening is that we have Presidential commissions, perhaps Congressional committees. We go to the U.S. Navy and we go to all of these other people begging them to give us the rights which are already ours.

What I am saying is that we need to terminate that type of relationship, that continual praying now creating new gods in Hawaii as if they really have jurisdiction over us.

With those remarks concluding the caveat, Mr. Chairman, I would like to move on to the narrative of the substantive statement.

I was invited to come before you—and this is the first time any committee has invited me—as the Director of the World Council of Indigenous Peoples. But just as a person really cannot split his spirit, too often, we try to do that. Indigenous people walk in two worlds, the foreigner's world and an indigenous world. When we split our spirit between the two, the result is schizophrenia.

We cannot split our spirit, so I come before you both as an officer of the World Council of Indigenous Peoples and as a Hawaiian citizen.

Let me very briefly describe this World Council of Indigenous Peoples. It is, as I said previously, an international indigenous organization in which we have five major regions of the world represented. These regions are South America, Central America, North America, Scandinavia, and, now, the Pacific and Asia. Asia has been recently included into that last region.

This organization has consultative status with the United Nations. We have worked over the years with the Working Group on Indigenous Populations, with the Subcommission on the Elimination of All Forms of Racial Discrimination, with the Commission on Human Rights, with ECOSOC. We have also worked with and have consultative status with the International Labor Organization. We have worked in conjunction with UNESCO, with the World Council of Churches, and many other international organizations.

This is just, as I say, a description of the World Council of Indigenous Peoples. My particular position is as the vice president in charge of human rights advocacy for the World Council of Indigenous Peoples on the international level.

With that description, let me get to the substance of the letter of invitation to testify. In the third paragraph which has been basically the subject throughout this hearing, you talk about a "thorough and unbiased study of the historic events leading up to, including, and following the overthrow" must be done to replace the findings of the current report.

The internal contradiction in that statement, Mr. Inouye, is that any committee that the U.S. Congress constructs will be an American committee. Whether or not you have it impartial in terms of being from the Republican side and the Democratic side, they are still Republican Americans or Democratic Americans, but they will represent an American viewpoint. You can say they are going to be of many different races, but they will still be Americans of many different races.

What we are addressing is a political question, not a racial question. The right of people to rule themselves is a political question.

So, what I am saying is that you will immediately run into this problem regardless of what kind of attempt you make as long as you restrict it only to American review.

The second part of that paragraph, the second sentence, is that, "Until this is accomplished, there is little likelihood that Congress will act to compensate the Hawaiian people for losses that occurred as a result of these events."

I have never heard any Hawaiian person in a position of responsibility say that the right to self-determination was for sale. That was the injury committed upon us. That was the central injury. That was the heart of the injury.

Everything else followed that because we didn't have the right to self-determination. So, any kind of compensation, if you are attempting to compensate for the loss of self-determination, is going to be inadequate.

You cannot use the same approach that you did for the Japanese who were incarcerated by the Americans. The Japanese are now free. With regard to the Hawaiians, a whole nation is still dominated and occupied by the United States.

So, what you would attempt to do is to try to buy out their liberty. The comparisons are of two completely different things. You cannot use the same comparison.

Notwithstanding the fact that I find the movement or the direction taken by this letter of invitation fundamentally erroneous, is there anything else we can talk about with regard to reparations then? If reparations is a means of paying and absolving the United States for its illegal activities in Hawaii, there is nothing further I can discuss, because as a Hawaiian citizen, I will never allow the Americans to decide that question.

If, however, we say that reparations are instead a response on a humanitarian basis, not on a legal basis for the activities committed in 1893 and which continue, but on a humanitarian basis, in view of the plight of the Hawaiian race at the present time, then I would submit there are a lot of things that we can discuss.

So, for the rest of my discussion, I would like to address it from that point on.

First of all, I think I should point out that statement, "the plight of the Hawaiian race". I will not go into this idea of the plight, because, Mr. Chairman, you are probably even more familiar with the present economic, social, cultural, and educational condition of the Hawaiian people. What I would like to do is pause for a minute and address the second part of that statement, the Hawaiian people or the Hawaiian race.

What is the Hawaiian race? At this point, what we are dealing with is not the Hawaiian nation, but we are dealing with an indigenous race, and that has to be very clearly understood. I think there is some confusion in this room.

It was a nation that was overthrown, a nation made up of people of many different races who were citizens of that nation. It was a political entity, not a racial entity, that was overthrown.

Yet, we cannot ignore the fact that it is that indigenous race which has suffered the most from that overthrow. I point that out just to show how inadequate the response would be if you were hoping that the response is a response to the illegalities committed to the nation. I think that has to be made very clear in our heads.

What is this race? If we take from this Hawaiian race all of the philosophical, the spiritual, the emotional, the intellectual attributes of the race, we are left with only a biological definition, and the Hawaiian race then becomes the oldest Po'e Hawaii, the oldest guy who has blood of the indigenous people running through his veins all the way down to the youngest kid. That is the Hawaiian race that you are dealing with.

If you take a more comprehensive understanding of what that race is, then you have to understand that the Hawaiian race began and still exists from time immemorial, from the time of creation, and all the ancestors who have passed away and many who are now regarded as aumakua all the way down to the present time, that is part of the Hawaiian race, and that cannot be ignored. And that race continues in perpetuity.

In the Hawaiian language, we have a term we call mo'omo'o. The mo'o is a lizard. It means the lizard within the lizard. If you look at the human fetus at a very early stage, the fetus looks just like a lizard. What we are talking about is generation after generation after generation unnumbered, and that makes up the Hawaiian race.

So, you cannot just pull out from a time continuum, take a snapshot, and say that this is all we are dealing with. No, it is a continuous time continuum when you are dealing with the Hawaiian race.

Second, the race cannot be separated from 'aina. They interdefine themselves. To talk about the Hawaiian race, you have to talk about the 'aina.

Third, you have to deal with the Hawaiian race as both from the individual characteristic as well as the collective characteristic. You cannot only address individuals and say that we are addressing the Hawaiian race. You have to also protect the collective nature of that race.

Fourth and a very important element is the element of free will. If you look at the Hawaiian race, they always exercise free will. In fact, at times, they even went against the gods. They are a free willed people.

These are all characteristics of the Hawaiian race, and I think it is very important that we pay attention to it, because if you are going to legislate any Congressional response, you have to have a very clear identity of the people you are talking about.

I will show you with one example what can happen when you don't have that clear identity and, instead, you only deal with the biological race. The situation is in Alaska.

Well, in view of these preliminary statements, what possible Congressional response can be made—and I would like to mention just five, but these are all interweaving responses.

One, of course, is a monetary response. Pay money. The question is, how much money? I don't know how much money, and it is up to you folks to decide based on that plight question, but I submit that the programs that you fund must emphasize the collective nature of the Hawaiian race, not to just teach individuals how to become better computer technicians, but to emphasize the collective nature in terms of what those things are that the Hawaiian people identify with—collectively, language; collectively, lands; collectively, the culture and the rest.

We need much more in the way of programs to retain that collective nature.

As I said before, if you only deal with the biological aspect, then you are talking about something very similar to the Alaska Native Claims Settlement Act in which you pay them off one time, and all of those who are alive today get the money, but, after that, that is it. The race is dead.

The second Congressional response would be resource transfer. In transferring resource, I am not only talking about land. I use the term 'aina because 'aina are those things that will provide sustenance for you. For Pacific islanders, we are water people and land people. You have to protect every possible resource that is part of the natural element and should be transferred over to the Hawaiian race.

However, the transfer cannot only be in terms of individual ownership. It has to be in the sense of collective ownership and collective control which means that the people themselves are now able to have jurisdiction over their territory. They control policing powers, taxing powers, zoning powers, and the rest.

On this particular point, I would like to point out that the International Labor Organization meeting of experts recently concluded that possession of traditional territories by indigenous people is essential for survival. As a result of that, they are moving in the direction of turning this territorial control over to indigenous peoples.

I was not able to attach the whole ILO report, but I do have the whole report should your staff be interested in reviewing it. I was not able to attach it to my formal presentation.

Third, there should be Congressional response to create a place for every Hawaiian in this society in his own homeland. At the present time, many of us are operating as strangers in our own land. We have really no political choice but to be American citizens unless you have some unusual characters who insist that they are Hawaiian citizens.

Why are we forced to become American citizens? We have never exercised that choice, that right. Before you can vote in the Office of Hawaiian Affairs, you have to sign a declaration that you are an American citizen. Before you take any office, before you even become an attorney, you have to raise your hand and say you support the U.S. Constitution as well as to hold any office.

There is no place in the political society for Hawaiians to be Hawaiians. We are forced to abide by and accept American citizenship.

We need that space to be ourselves. Economically, we have no choice. Educationally, we have no choice. Life style—there is really no choice of life style, because the society has so changed that we have to mimic the ways of the yankees.

I think Congress needs to take a look at that and decide. How are we going to create places for the Hawaiian people to be Hawaiians in their own homelands? Later on, we can resolve all these other questions, but in the meantime, stop burdening them. Stop forcing them to walk in our world when that is not what the choice is.

Now, some people may say, well, that is impossible. We have to recognize that we are part of the United States. I submit that that is not impossible.

At the present time, you already have four different systems of laws operating over a particular individual. You have county level law, you have the State law, you have Federal law, and you have international law. So, you have this idea of a condominium of laws.

But that is on a horizontal level. You also have a different system of condominium of laws on a vertical level. Take, for example, the New Hebrides before it received its independence and became Vanuatu. You had laws imposed by the French, and you had laws imposed by the British, two different sets of laws over the same area.

Of course it is going to be tough to construct these laws and how we are going to build it, but I submit that is your responsibility—not mine. It is your responsibility to pay attention to these things and to construct it as an obligation to the indigenous people of Hawaii.

Next, I submit that Congress needs to recognize the right to autonomy of the indigenous peoples, and I used the term "autonomy" because I don't like confusing the term "nationhood" or "sovereignty" in the international sense as opposed to the American sense.

The Americans have abused the language. They have called something a nation when it is really not a nation. They have defined sovereignty in their own terms, "sovereignty within another sovereignty." That is a contradiction in terms. The definition of sovereignty is that you have no higher legislature but God, so you cannot put the U.S. Congress above that legislature.

So, what I am talking about at this point, until we resolve the other question of the culpability of the United States and the result of that culpability. Congress should recognize the right of autonomy of indigenous peoples.

Five, I would suggest that there should be some very specific changes in judicial procedure in the courts. I represented some of the defendants in the Makua case. I also represented some of the defendants in the Sand Island case and in other cases.

Often when we go to court, we argue the point that the lands upon which our people were arrested were not Hawaii State lands. They are not American lands. They are Hawaiian lands.

Then what we do, we trace the history of Hawaii and the land title all the way back down to 1893 to point out that by 1893, the lands were part of the government from the mahele. The court's response; "Mr. Burgess, we don't look beyond 1895. That is where we close the books."

Take, for example, the land at Makua where all the people were arrested. Those were Hawaiian lands, but they don't want to even investigate or look into these issues, and that is a policy of the court system.

Another point, when we went into the court, the whole courtroom refused to rise for Judge Harade out in Waianae. We are all found in contempt of court—without interfering with any of the judicial procedures. And all we are trying to do is express our being Hawaiian and our being loyal to our nation as we conceive that nation.

When I go before the Hawaii Supreme Court, I refuse to rise for the judges. I am publicly censored.

Thus, we have an idea of the kind of space we have to allow our people to exercise, to be Hawaiians in our own homelands.

Mr. Chairman, I know I have taken surely more than the 10 minutes allotted me, but I thought that these points were important at least to be placed on the record for your committee. I thank you for your patience.

Mahalo.

[Prepared statement of Mr. Burgess appears in appendix.]

The CHAIRMAN. Mr. Burgess and Mr. Agard, I thank you for your contributions this afternoon.

When we began our hearings about two decades ago, the word "sovereignty" or the word "autonomy" was never heard, and none of the witnesses ever invoked the concept of sovereignty in our hearings. Sovereignty was a word that began to appear about a decade ago and, more persistently, about 5 years ago.

A few moments ago, I was asked by the networks present in this room whether I felt that the issue of sovereignty was a legitimate issue, and I said that it was not only legitimate, but it was an appropriate issue for the Congress of the United States to consider.

Obviously, I do not speak for all Members of the Congress, but I am the chairman of this committee, and I will most certainly discuss this matter of sovereignty and autonomy with my colleagues on the committee.

I thank you very much, gentlemen.

Our next panel consists of the Executive Director of the Native Hawaiian Legal Corporation, Ms. Mahealani Ing; professor of the University of Colorado at Boulder, Professor Charles Wilkinson; and an attorney of the Native American Rights Foundation of Boulder, Colorado, Mr. Steve Moore.

Ms. Ing and gentlemen, welcome.

STATEMENT OF MAHEALANI ING, EXECUTIVE DIRECTOR, NATIVE HAWAIIAN LEGAL CORPORATION

Ms. ING. Thank you.

Good afternoon, Senator Inouye, and aloha to your staff members all of whom I think are wonderful.

My testimony will be even more brief than I have indicated on my written submittal. I will skip the part which provides a little background about our organization, because I think you are well aware of our work.

The **Chairman**. As I assured all witnesses, your full statement will be made part of the record.

Ms. **Ing**. Thank you, Senator.

I would like to begin by moving instead directly to the very important theme which you just acknowledged has emerged at this hearing more persistently, perhaps, than in the past and which I am sure will surface again in the context of countless other Hawaiian gatherings in the future.

In Hawaiian communities, especially in the past 10 years, as you have indicated, native initiatives for self-government have gained tremendous momentum. When presented with the opportunity to vote for representatives who would oversee matters pertaining to Hawaiian affairs, 60,000 individuals registered to vote for OHA trustees. In addition, there are strong community-based organizations whose substantial membership have declared themselves citizens of the Hawaiian nation.

The press for sovereignty and self-determination is on. The time is now. I mention this at the outset because it is the basis of my response to the inquiry before us.

As you have heard mentioned several times, a conference recently coordinated by my organization resulted in the adoption of five principles, and I would like to incorporate by reference the entire testimony of the panel which preceded us, Na au pono. They very ably described the five principles that were adopted and which form the basis of my testimony as well.

There are undisputed facts relating to wrongful acts committed by United States agents in 1893 which compel us to insist that past injustices be acknowledged; that compel us to insist that lands and money be returned to the Native people and indigenous rights guaranteed; and that compel us to insist that our right to govern our nation be acknowledged, respected, and supported.

We are certain that comprehensive reform legislation must be adopted embodying the five objectives described. We are not certain at this time, however, of the specific means that would best achieve those goals. Therefore, we anticipate detailed discussions with your excellent staff in the upcoming months and years perhaps to explore all suitable options.

We expect to be full partners in this process. We are a competent and committed people. We are competent to formulate and implement whatever strategies are necessary to achieve our goals. We are committed and dedicated and utterly determined that wrongs of the past will not be visited upon our children.

We do not favor the U.S. Claims Court option, and I am just going to leave it at that in the interest of time. In fact, I am going to skip over everything and tell you, Senator, in all truth, it was very, very difficult to choose between the options you so thoughtfully proposed for our consideration.

Very recently, I have talked with other Native leaders about the possibility of constituting a commission based on Native initiative, in other words, a commission that would be a fact finding body initiated by Hawaiians themselves.

With those comments, I would like defer to the next speaker.

Thank you.

[Prepared statement of Ms. Ing appears in appendix.]

The **Chairman**. Thank you, Ms. Ing.

Professor Wilkinson.

Mr. **Moore**. Excuse me, Senator. With your indulgence, I will switch orders with the professor and address you next.

The **Chairman**. Fine.

STATEMENT OF STEVEN MOORE, ATTORNEY, NATIVE AMERICAN RIGHTS FUND, BOULDER, CO

Mr. **Moore**. Good afternoon, Mr. Chairman, members of your staff, and distinguished guests and participants in this historical event.

My name is Steven Moore. I am an attorney from Boulder, Colorado, with the Native American Rights Fund. I am pleased to offer testimony on behalf of the Native American Rights Fund on the subject of the appropriate response of the United States Government to the 1893 overthrow of the Hawaiian monarchy.

Since 1970, NARF, as we are known, has assisted several dozen Native governments in seeking and securing political recognition from the Government of the United States. This number includes several tribes terminated under the Federal policies of the post-World War II era known as the "Termination Policy." Those tribes, I am happy to report, today have been restored to full political recognition in the eyes of the United States Government.

Among the more memorable efforts NARF undertook on behalf of tribes include the Menominee Restoration Act of 1973 which Professor Wilkinson was personally involved in; the Maine Indian Claims Settlement Act of 1980; and, most recently, the Yselta Del Sur Pueblo and Alabama and Coushatta Indian Tribes of Texas Restoration Act of 1987.

Before I begin my substantive remarks, I want to extend to you, Senator Inouye, my utmost appreciation and respect for the statement you just made concerning the autonomous and sovereign rights of native Hawaiian people. I think that in your tenure as Chairman of the Senate Select Committee on Indian Affairs, you have made a difference for Native Americans on the mainland, working with your excellent and experienced staff, and I think that it is morally and ideologically consistent that you take the leadership in making a difference for Hawaiian Native people in the years to come.

We, the Native American Rights Fund, are fundamentally opposed to a Congressional reference to the U.S. Court of Claims which would only provide a cash-out or cash settlement of claims as the sole method of redress. Cash payments alone simply do not work.

The Indian Claims Commission Act of 1946 which limited settlements of tribal claims to straight cash payments have never worked economically or socially for American Indian people on the mainland. They have never been satisfactory to the Indian people. A more comprehensive approach is needed.

Moreover, there is no means of review of Court of Claims reference decisions to the Federal Appeals Court system. These claims are simply too complex and too important to the Native Hawaiian people to be left to the decision of one Court of Claims judge who probably has less familiarity and understanding and sensitivity to these claims than the bureaucrats that you referred to in your opening remarks.

There are unmistakable parallels between the 1893 overthrow of the monarchy and Congress' unilateral divestiture of Indian tribal recognition in the termination era of the 1950's. This whole question of return of sovereignty and self-government to Hawaiian natives therefore should be viewed from a restoration perspective. Indeed, both Queen Lili'uokalani and President Grover Cleveland referred to the concept of restoration in connection with post-1893 efforts to return the Queen to the throne of the Hawaiian monarchy.

The United States must now confront the illegal events of the past and begin the process of restoring to Hawaiian Natives their sovereign birthright.

The experience which NARF has gained from our two decades of work securing the recognition and restoration of tribal sovereignty on the continent is that any sovereign movement is, at bottom, a movement of the human spirit. And you, Mr. Chairman, in your tenure with this Committee, have learned first-hand the importance of preserving, protecting, and nurturing tribal sovereign rights against those forces that would rather see them disappear from the face of the earth.

So much of the pride and integrity—the spirit—of the Native people of the United States is bound up in recognition of and respect for their basic differences as human beings. Such recognition and respect must be extended to them, culturally, economically, and politically.

The first and most important step the United States Government can take to ensure that the spirit of the native people of America flourishes is by way of recognition of their sovereign rights. That is the primary lesson of the past two centuries from the American Indian experience on the continent.

As Thomas Berger learned well from his experience chairing the Alaska Native Review Commission which he chronicled in his remarkable 1985 book, *Village Journey*, "most Native peoples have no wish to assimilate. They insist that their own culture is the vital force in their lives. Without political autonomy and their own land-based economy, they fear that they will be overwhelmed, facing a future that would have no place for their cherished values."

When the cultural integrity and values of a native people are broken, crushed, and overwhelmed, the human spirit, the Native spirit, withers and dies. I submit, Mr. Chairman, that the Hawaiian people have been subjected to two centuries of unyielding pressure from social, economic, and political forces from both east and west which has threatened to crush the Aloha spirit.

However, despite all the peripheral changes to Hawaiian native culture and lifestyle, the Aloha spirit is alive in Hawaii, a little worse for wear, perhaps, but, nonetheless, on the resurgence. Every Native person in this auditorium is a living testament to that fact. They, like you, know of the rights of sovereignty and self-government enjoyed by American Indians on the continent. They have joined in alliance with their brothers and sisters of the Pacific and are involved daily in independence movements in Tahiti, Aotearoa and elsewhere. Most importantly, they have come here today to impress upon you and your colleagues in the Congress that they are committed to regaining their birthright, the restoration of sovereign powers to the Nation of Hawaii.

Detractors of the native Hawaiian sovereignty movement would make the same claims that we have heard on the continent respecting American Indian tribalism, that "they" are not sufficiently educated or sophisticated in the ways of the white man's government to govern their own affairs or that "they" are too factioned and divisive in their own ranks to responsibly take over and run their own government.

But you, Mr. Chairman, have the advantage of firsthand experience. You know that most Indian governments work efficiently and work well, in part because of healthy political debate and disagreement among Indian people. Like all governments, they have their political squabbles and scandals. But who are we to judge with our Pentagon sweetheart deals, our Iran Contragates, and our Watergates, each of which you have been intimately involved in investigating on behalf of the Congress?

So, I think we should expect and understand that, at this point in time, there is not unanimous agreement on certain important issues relating to the native Hawaiian sovereignty movement. One such issue is the rightful recipient of sovereign powers. I believe that today is a false issue that is really detracting from the importance of the moment.

All Hawaiians in the movement first want to see a commitment from the United States to restore sovereign power and autonomy. The incidental details such as the exact form of the governing body for the Nation of Hawaii can and will be worked out by native Hawaiians along the way.

Another issue is the exact nature and scope of sovereign powers returned to Hawaiians. Many Hawaiian natives want restoration of total and complete autonomy and independence from the United States, and they want it now. It was theirs before the 1893 overthrow; why should it not be theirs now?

Admittedly, this is a tremendously difficult question to answer, and politically volatile. Were this a perfect world, it should and, indeed, would be theirs again. This is not a perfect world, as we all recognize, but, again, this is not an issue that should detract us off the mark and away from the moment and the critical issues at hand.

We first need a commitment by way of Federal legislation to work with the Hawaiian people to study all alternative sovereignty models. The important point to keep in mind is that the current model with the State of Hawaii and its bureaucracy at the helm does not work. You, Mr. Chairman, why such an arrangement would never be acceptable to American Indians on the continent.

State governments serve the interests of a broad constituent base most of which are inimical to those of Native people. The past 30 years in Hawaii have resulted in the subordination of the rights and needs of Native Hawaiian people to the economic and political interests of majority society.

The Native American Rights Fund makes the following recommendations which would set in motion a process to restore the true government-to-government relationship between the United States and the Nation of Hawaii:

First, we believe the 1983 Native Hawaiian Study Commission report which found insufficient evidence of illegal conduct by the United States Government in the overthrow of the monarchy is seriously flawed, politically motivated, and wrong. As an alternative, we believe that it is unnecessary to once again go through the lengthy commission process to repudiate the findings of that 1983 report.

Congress can, as a matter of law, make specific factual findings that would absolutely repudiate those findings and would restore a different set of findings concerning the illegal nature of the conduct.

The Senate Select Committee on Indian Affairs should commence work now on a Native Hawaiian sovereignty reparations act that would contain the five points that you have heard repeated today throughout the testimony. I also include a sixth a repudiation of the 1983 commission report. But first must come an apology to the Queen. Second, the return of a land base and natural resource base. Third, the scope of sovereign powers to administer and manage and take care of that land for the Nation of Hawaii. The full scope of those sovereign powers, again, could be the subject of future negotiations between you and Native Hawaiian representatives.

Fourth, the recognition and protection of the subsistence and commercial hunting, fishing, and gathering rights of Native Hawaiians which includes beach access and the preservation and protection of important cultural and religious sites. These resources and the protection of these resources are necessary to maintain the unique indigenous way of life of the Hawaiian people.

Finally, a suitable cash payment would be required.

Alternatively, if, given the complexity of these matters, the Congress is not of a mind to take this matter on legislatively at the outset, then we would recommend the appointment of a panel or a commission by the Congress to begin to study the full scope of all of these issues. The commission should have a fixed life of 1 to 2 years and be adequately funded to research and report back on the issues at hand and, ultimately, should be charged with developing a legislative proposal addressing the points set out above which Congress could then get to work on.

In conclusion, Mr. Chairman, over the course of the next few months and years, everyone who has been and who will become swept up in the Hawaiian native sovereignty movement will pause from time to time to take stock of the movement's significance for the Hawaiian people and, indeed, for all of humankind. I firmly believe that each of us can already feel that there are larger forces at play here.

In some respects, the Hawaiian native movement carries its own inertia, but it is also an unmistakable part of a much larger tide of events sweeping the world. Out of this tide of events will emerge a new harmony between people of white and brown or red skin, a balance in which we respect each other for our differences as much as for our similarities. What we are all about here is simply working together to restore that harmony and balance.

We must all burn these words of Thomas Berger into our consciousness: "The problems are now manifest; the means of resolving them are already at hand. All that is needed now is will, good will."

Mr. Chairman and staff, on behalf of the Native American Rights Fund, I want to thank you for this opportunity to testify, and I would be happy to answer any questions you may have.

[Prepared statement of Mr. Moore appears in appendix.]

The Chairman. Thank you, Mr. Moore.

Professor Wilkinson.

STATEMENT OF CHARLES WILKINSON, PROFESSOR, UNIVERSITY OF COLORADO AT BOULDER

Mr. Wilkinson. Mr. Chairman, my name is Charles Wilkinson. I am a professor of law at the University of Colorado and do my work in natural resources and Indian law. Among my writings are the standard case book in Federal Indian law, the Cohen treatise in 1982 on which I was managing editor in a book on Indian law that was released last year by Yale University Press. I will be very brief.

I do feel it important to say, as I have when I have testified before this committee although it is all the more apparent to me now, the extraordinary accomplishments of this 2-year term. I happened to talk to Patricia Zell just a few hours after you 2 years ago expressed your interest in this committee post and your enthusiasm and idealism, and we had great hopes back then. One of the most exciting things in professional life, I think, is when hopes are exceeded, and that has happened.

This has been a time for Indian legislation and initiatives that I think can be equalled in the 200 years of Federal Indian policy only in the mid-1930's and the mid-1970's, and it is without any doubt due to your work despite many other pressing obligations. I think it has lifted the spirits of native people from these islands to the State of Maine.

I would like to take just 2 or 3 minutes and highlight these points, including a couple of questions that the chairman has had.

In my view, the concept of reparations or restitution is the wrong concept. It is too narrow and technical and gets off into a series of legalistic issues that don't meet the full range of needs of Hawaiian natives.

The right idea, it seems to me, is restoration. Restoration is a phrase that Queen Lili'uokalani used, and it matches Congress' policy of restoring to native governments those powers that were terminated.

1893 was, ultimately, a massive termination of native rights here. To be sure, the Native Hawaiian Government possessed a greater degree of sovereignty than did native governments on the mainland. If there had been a United Nations in 1893, Hawaii would have been in it.

Therefore, the fall, perhaps, was longer and deeper, but the result was the same. Jurisdiction over these islands was lost. The ability of Hawaiian natives to have their own courts and their own legislature was lost. Title to land was lost. Fishing rights and hunting rights were lost. Also, religious rights were lost.

America is a nation under the First Amendment that is among the world leaders in recognizing free religion, but as we learned just recently in the Supreme Court, it does not accord the full range of rights to native religions that would exist under their own laws. So, in 1893, there was just a series of powers and prerogatives and land rights that were terminated.

What Congress has done for natives whose rights have been terminated is to grant them restoration, beginning with the Menominees in 1973 and a whole series of bills. Time after time, Congress has done that.

Restoration, as I think the Queen contemplated it and as modern Federal Indian legislation contemplates it, is so much broader than reparations and restitution which are limited to money damages which is not sufficient for Hawaiian natives, and it is way down their list of priorities. It has hardly even been mentioned today.

So, I would urge that further proceedings be in the context of restoration.

I hope, too, that we will look very hard at the circumstances on these islands today to determine whether restoration would be appropriate. I think that as the process evolves, it will become apparent, for example, that there are a great many benefits to non-natives in these islands that will accrue from restoration.

Land stewardship will be promoted by restoration. The aloha spirit really will be permanent and will thrive if there is restoration. And if there is restoration, there would inevitably be Federal expenditures here that would revolve through the economy as has been found within the States in which every terminated tribe has been restored. Those Federal benefits matter.

So, my guess is, Mr. Chairman, that, originally, there will be concerns among non-natives and even outright objections, and it is undoubtedly a controversial matter. My guess is that will wane over time as the benefits and the justness of the cause become apparent.

You asked some questions in a general way about what the land base would look like and what hunting and fishing rights and religious rights would look like. My concept of the five points that have been raised, Mr. Chairman, is this, that the land base would be principally around several villages throughout the islands and also some inland areas that would be mainly for farming and wildlife habitat and watershed. That would be the land base.

As you discussed earlier with a panel, yes, native sovereignty would extend over that land base that is in their ownership.

The important rights in number 4 of the proposal, hunting and fishing rights, beach access, free religion, and access to traditional sites would be off the land base, and they would be designated and there would be areas where Hawaiian natives would have fishing rights to fish under their own jurisdiction. They wouldn't be exclusive. They would be quite parallel to the off-reservation rights on the mainland, but the beach access guarantees and the religious exercise guarantees would be largely off the land base.

You asked—and it is an entirely proper concern; it is one shared by every person in this room—who will represent Hawaiians? What will be the sovereign entity?

I honestly believe that that will emerge as we go through the process, and I don't think it needs to be confronted now. There are several vital grass roots organizations. There is OHA. They are appointed, as one can see from OHA's testimony, in the same general direction of restoration of sovereignty and a land base.

One example of how that could be resolved, just an example, because Hawaiians working with you will make these decisions over the next couple of years, would be that the act would establish a committee of Hawaiians that would implement the act. It would be a broad-based committee. That committee could submit to Hawaiians three constitutions. Hawaiians could decide which of those they wanted.

That would be one way to do it. We are early in this process. It is flexible. One organization that embodies a common concept will probably emerge one way or another.

It seems to me important now to keep the focus on concepts such as those embodied in the five points.

I will finish by adding a personal note of a kind that I have never made before. I entered law school in 1963 which I realize is a quarter of a century ago. I did so, I think, Mr. Chairman, for the same reasons that you have engaged in your professions, as an idealistic person who wanted to become involved in public policy.

My life was changed in a wondrous way in 1971 when I joined the native American Rights Fund and served there for 4 years as a staff attorney. I have worked for natives since then in different contexts in addition to my scholarly work.

In all my time as a professional person, no situation has gripped my soul as the situation of native Hawaiians has. Their culture is so strong and so beautiful and so worthy.

It is my guess that in upcoming years, it will become apparent to a wide range of people that the fairest and best way, the way that a great and wise government can best preserve that remarkable culture, is through restoration of sovereignty and a land base.

Thank you very much.

[Prepared statement of Mr. Wilkinson appears in appendix.]

The CHAIRMAN. I believe the applause says much more than I can, Professor and Mr. Moore and Ms. Ing.

I can assure you that the testimony that we have received this morning and this afternoon will have much bearing upon what our committee will do, and I can assure you now that this committee will act upon the evidence we have received today.

As most of you are aware, at 2 o'clock, we resume our hearings to receive testimony on the mental health status of native Hawaiians, and 2 o'clock is soon upon us. I have been advised that Mr. Albert Sing, Mr. Clarence Kumai, Mr. Arthur Kepo'o, Mr. John Simeona, and Mr. Arthur Trask wish to testify, but at this moment, that would seem to be an impossibility.

I have instructed my staff to cancel my activities on Wednesday, August 31, between the hours of 2 and 5 p.m. If those who wish to testify would gather at my office at 2 p.m. on the 31st in the Prince Kuhio Federal Building in my conference room, I will reconvene the hearings and receive your testimony. After receiving the testimony, I would like to meet with the leadership of Hawaiian organizations to discuss the matter that we have discussed today, the matter of autonomy and sovereignty and see where we can go from here.

I think we have something that is beginning to brew here.

Well, it has been a very important day for me. It is always good to hear native Hawaiians speak of their sovereignty and autonomy with such eloquence and with much emotion. That is the importance of hearings.

Often, we tell our witnesses to submit statements, but statements lack emotion, and statements lack a sense and spirit of commitment.

I think this has been all very apparent this morning and this afternoon. I will have some difficulty conveying your thoughts, but I will do my best in conveying them to my colleagues on the committee. I suppose as chairman of the committee, I do have a few prerogatives, so I will see what I can do about it.

I thought I should spend a couple of minutes now telling you about this committee.

This committee is called the Select Committee on Indian Affairs. When I became chairman, it was considered the least important of all committees in the Senate. In fact, it had the smallest space, the lowest paid staff, and no hearing room. Every other committee had a hearing room which is very important.

Well, things have changed now. We have a bigger space. We have the best equipment. The committee used to receive the leftovers. We had no computers. Now, we have the finest computers on the Hill. We have a hearing room, a beautiful hearing room in the majestic Russell Building.

During the 2 years, I have had the opportunity to visit Indians in Indian country, because it became apparent to me very early that solutions made in Washington for Indian problems just somehow did not work. So, to my surprise, I learned that I was the first chairman to ever visit Indian country. In fact, I am the first to ever go to the Pacific Northwest to visit the Makahs and Puyallups and the Nisquallys and the Yakimas. I was the first to go to California as chairman and first to go to the Southwest and visit the Apaches and Hopis and Navajos and Pueblos.

I just came back from the Plains, and now I am on my way to visit the Eskimos and the Aleuts.

A brief recitation of the history might be enlightening, because many witnesses have spoken rather eloquently of the sovereignty of Indian people, and one might get the impression that with this sovereignty, Indians have fared very well in our society.

Two hundred years ago, anthropologists suggest that there were approximately 10 million Indians residing in the continental United States. Some suggest it was as high as 100 million; others go a little lower than that.

It is difficult to determine the census because Indians, to a great extent, were migratory people. In the summer, they would go up north. In the winter, they would come down south, and they had the whole nation as their place to live. But let's say it was 10 million.

Two hundred years ago, Indians were very important to Americans, because they participated in our wars. Many Indians gave up their lives to the American revolutionary cause.

So, in the Congress, two of the most important committees in the House and the Senate were the Committees on Indian Affairs. Today, the House of Representatives has no Committee on Indian Affairs. The Senate has a Select Committee on Indian Affairs. The word "select" suggests that it is temporary, but we have just made it permanent.

When the Europeans began moving in, it became apparent to those who were governing our country that Indians were not important. In fact, they were in the way of progress, and they were in the way of settlement.

So, we adopted a policy through several Congressional acts to push Indians west of the Mississippi. That is why if you visit the eastern part of the United States, you will find very few Indians. In fact, many Indian tribes disappeared as a result of this national movement.

The most publicized movement is the movement of the Cherokees. The Cherokees' homeland is found in the Carolinas, North and South Carolina. It was a huge Indian tribe, and they were forced to walk all the way to Oklahoma. By the time they got there, only 5 percent survived and 95 percent died. It was worse than the Bataan death march.

Well, we also had as part of this policy of moving Indians out of the way the so-called Hollywood version of the Indian wars. These have been glamorized with General Custer and others. You have seen famous names like Rain in the Face, Crazy Horse, Sitting Bull, and this is depicted in our history books as a time of great glory for America.

Anthropologists suggest that at the end of the Indian wars, there remained in the United States between 250,000 and 800,000 Indians. A hundred years before then, there were at least 10 million.

Now, these Indians died from European diseases, they died from exposure, they died from disease, and they died from killings.

There is an interesting footnote to the Indian wars. During that period, there was a Major General who was the Surgeon General of the United States, the chief doctor. He was a scientist. At least, he considered himself a scientist, and he was involved at that time with other scientists in measuring the cranial capacity of human beings. It was suggested at that time that the larger your cranial capacity, the smarter you are.

So, he sent a message to the officers and men in the field. It was a simple message coming from a General saying I am now in the midst of studying Indian crania. Would you help me in this study by sending me skulls and human remains of American Indians?

Well, the Army received so many of them that they couldn't accommodate them. So, they transferred all of their collection to the Smithsonian, the great museum institution in Washington. Together with the Smithsonian collection—the Smithsonian has anthropologists and archaeologists who excavate areas looking for old skulls and human remains. Today, in the warehouses of the Smithsonian, there are over 14,500 skulls and skeletal remains of American Indians. In addition, there are 4,000 belonging to Native Alaskans. So, there are 8,500 continental Native Americans.

Just imagine any museum in the United States with a collection of 18,500 Irish skulls or Japanese skulls or Hawaiian skulls. But there are 18,500 Indian skulls and skeletons in the Smithsonian.

The city of Washington is considered a city of monuments. In fact, the tourist brochures always refer to Washington as a city in which to visit great monuments: the Lincoln memorial, the Washington memorial, and the Jefferson. There are 400 monuments and statues in the city of Washington, over 400. They are all over the city. In the Capitol Building, there are about 200 of them.

Yet, there isn't a single statue of an Indian. Now, one would think that in the Nation's capitol, there should be at least one, because, after all, they are the first citizens of this land. They were there before any one of us ever thought about coming here.

What is the situation with the Indians today? Last week, the Labor Department came out with the unemployment figures for the Nation. The unemployment rate is 5.2 percent. It is a great number, 5.2 percent.

In the Indian reservations, in and around Indian reservations, the unemployment today is 57 percent. It is as high as 95 percent in some of the reservations. The more fortunate ones are as low as 10 percent.

The poverty level for the United States is 9.6 percent, that is, 9.6 percent of the people of the United States live at a poverty level or lower. With the Indians, it is 24 percent.

Twenty-three percent of Indians live in houses that would be considered totally unacceptable. These houses were built for four people, two adults and two children. The majority of them have three families living in these hovels.

The health picture is one that is so unbelievable it is mind boggling. Diabetes is three times that of the national picture. In fact, if you are an Indian adult male and you reach the age of 50, the chances are you are a diabetic, because 51 percent of men over the age of 50 are diabetic.

Suicides are three times that of the national average in every age category. Alcoholism is three times that of the national average. Tuberculosis is three times that of the rest of the Nation. They have diseases that we thought had disappeared like trachoma.

So, sovereignty, in some cases, hasn't helped, because the United States, through its treaties, I believe, took upon itself a trust responsibility which it has failed to carry out over the years.

I am a Senator, so the matter of treaties is very important to me. The United States Senate, as all of you know, ratifies treaties. The President gets together with some head of state, and they sign a treaty, but we Senators discuss and vote upon a treaty.

And treaties are very important to us. Americans are always maintaining that we are proud of the way we live up to our treaty obligations, and we are quick to condemn other countries who violate, even technically, treaties.

The United States entered into 800 treaties with Indian nations and Indian tribes, 800. The United States Senate refused to act upon 430 of them, just filed them away. Yet, we insisted that the Indians live up to their obligations. We ratified, at least my predecessors did, 370 of them, but we proceeded to violate provisions in every one of them, every one.

So, it is no surprise that Indians are at this stage. However, like Hawaiians, Indians are beginning to get restless. There is a movement afoot. They are demanding greater autonomy, self-determination, and we have been trying to accommodate them with legislation that we have devised resulting from our meetings with Indian leaders.

We are trying to set up an Indian financing program, an Indian health program. Instead of having doctors being sent in from Washington, the Indians want to provide their own doctors and, in some cases, employing old Indian practices of treatment. We are encouraging all of this. So far, the results seem to indicate that they are working.

So, I can assure you that this committee is not only sensitive to what is happening in the United States, but they are very eager to be of assistance. It is a bipartisan committee. The vice chairman of this committee is a Republican, and every bill that we have reported out, with the exception of about two or three, has been unanimously reported.

After meeting with interested members of the Hawaiian community, I hope to get back to my committee and begin the process of drafting appropriate legislation. Don't expect any miracles. Nothing will happen this year. After all, we are just about finished with our work this year, but I can assure you that early next year, things will begin to brew.

With that, I thank all of you. I thank all of you for your patience.

[Whereupon, at 1:45 p.m., the committee recessed, to reconvene on Wednesday, August 31, 1988.]

NATIVE HAWAIIAN REPARATIONS

WEDNESDAY, AUGUST 31, 1988

U.S. Senate,
Select Committee on Indian Affairs,
Honolulu, HI.

The committee met, pursuant to recess, at 2:23 p.m., in the conference room, offices of Senator Inouye, Prince Kuhio Federal Building, Honolulu, HI, Hon. Daniel K. Inouye (chairman of the committee) presiding.

Present: Senator Inouye.

Staff present: Patricia Zell, chief counsel; Lurline McGregor, professional staff member; and Elva Arquero, chief clerk.

The **Chairman.** We will resume our hearings which we recessed on the campus of the University of Hawaii last Friday. This special hearing is convened to accommodate those people who wish to make their views known but for whom we didn't have enough time during the Friday hearing.

Our first witness is Mr. Albert Sing.

STATEMENT OF ALBERT SING

Mr. **Sing.** Thank you very much, Senator Inouye. It is a privilege to be here.

When we talk about the scenic land, we talk about revenues for the betterment of all Hawaiian people. I speak myself as a citizen.

I have never looked back at the history. I respect what was said on Friday. I respect the history. I respect the culture, and I would see that the culture of the Hawaiians people is well protected in the interest of looking back at the historical history of the Hawaiian days of the past and of the overthrow of Queen Lili'uokalani.

What I am primarily concerned with is what Congress can do or what the committee can do or recommend. I am looking directly at the welfare needs, the needs of the Hawaiian peoples today. There are those who do not have the privilege to come and voice their opinions or make suggestions for their betterment to make Hawaii what Hawaii should be.

I am saying that, Mr. Chairman, we have discussed so many times so many wrongs about the ceded land, a lot of excess unused land that can be turned about for the good use of the Hawaiian peoples provided that we can set up programs for the use of the lands so that every Hawaiian can benefit and profit by the use of the land.

Surely, we are talking about land, but we also have to talk about money. I look again at a lot of land that is used by the military as well as used by private enterprise and the State of Hawaii. Part of those lands have rightfully been set off for the benefit of Hawaiian peoples to use. We have the Hawaiian homelands, lands where the Native Hawaiians have the use and utilize it to build a home or rehabilitate themselves.

That is primarily what the Hawaiian homestead land was all about, to bring about the rehabilitation of the Hawaiian people, rehabilitating that land so that land could be used to make him self-supporting, to bring food back to the table for himself.

The concept that we should look at and be thankful for are many of our unused lands that are now presently held by the government, both Federal and State governments, as well as some private enterprise. I am talking about private enterprises like Dole Pineapple Company. My wife worked that plantation.

These lands now are slowly filtering away. Sugar is beginning to slowly fade away. Dole Pineapple Company and others are slowly moving away.

Pineapple and sugar cane workers are coming from foreign countries such as the Philippines and Cuba and other places. Today, these big companies can cut down the labor force and cut down the cost of shipping the pineapple and cane to where it is to be refined or canned.

These lands could be returnable wherever these lands that are used by the military and the State and private enterprise are not presently being used. I am saying that many of these lands are usable for the Hawaiian peoples.

I would like to see Congress enact into law that those lands be returned to the Hawaiians, unused lands, the land that the military is not using or private enterprise or that the State is not using. Those lands should be returned to the Hawaiian people.

Let the Hawaiian make his decision and make it so that they are able to use that land so that they are able to help develop new economic opportunities and business and jobs for Hawaiian peoples. I think the Hawaiians should be also creative economically and use their civilization of Hawaiian peoples to utilize these lands for themselves.

I look at whether the lands are presently used by Federal and State governments. Those lands are what I call essential lands. I would like to see that Congress enact legislation to say that those essential lands which belong to the Hawaiians be returned to the Hawaiians on the basis of the dollar revenue, returning revenues to the Hawaiian peoples.

Those revenues could be forwarded and turned over to OHA where OHA could be using these revenues to promote and to upgrade whatever programs need to be done for the betterment of Hawaiians. Health is one of them. Education is another one. Also, I look at the economics of the programs. There are many other social programs that OHA can work together with the Department of Social Services with Alu Like and work in job placement and look at economic growth for the betterment of Hawaiian peoples, and so combining these agencies together that are directly involved with the welfare of the Hawaiian peoples.

I say OHA would have the provision of money coming from these revenues from the Federal Government using the land, the State using the land, and private enterprise now using the land. These lands should be turned into revenues for the use of the Hawaiian people for money to run programs to make decisions for themselves.

I feel as a citizen that I would like to see that somewhere and somehow. We talk about reparation. This is the reparation I am talking about. I am not solely saying I want money to come into my pocket. No way. I want money by coming through the route of usable land that could be returned for the betterment of the Hawaiian peoples by revenues that come in.

We would use the excess lands. OHA can primarily use those excess lands to put the Hawaiian back on the land so they can use that land for themselves to be self-determining and economically self-supporting.

I recommend, Mr. Chairman, that this idea of these conditions as reparations. I would like to see that. I don't want to see conditions that you give me $5 and say this is what you get for reparations. No. I want the money through the return of land that is now used by the Federal and State governments and private enterprise. Those moneys should be returned by a share of revenues, from 50 to 75 to 100 percent of revenues to be returned to the Hawaiian peoples.

In conclusion, may I say, Mr. Chairman, that I appreciate very much your consideration and your allowing me to speak as a private citizen and to express my feelings and my thoughts for the welfare of the Hawaiian. I want to express that I do not speak out of selfishness for myself, because I have always been looking out for the underdog and the betterment of the Hawaiian people. I want to see those Hawaiians get their education in reading or in the use of their hands to promote and develop themselves to be self-supporting.

Thank you very much.

The CHAIRMAN. I thank you very much, Mr. Sing. The words that you have spoken have been repeated many times by other Native Hawaiians, and I can assure you that they are being heard.

Mr. Clarence Kumai who wanted to be here this afternoon to testify has just notified me that he is not able to make it. So, he has asked that his statement be made part of the record. Without objection, it is so ordered.

[Prepared statement of Mr. Kumai appears in appendix.]

The CHAIRMAN. Our next panel consists of Mr. Arthur Kepo'o, John Simeona, and Frank Nobriega.

Mr. Kepo'o, please proceed.

Mr. KEPO'O. Thank you, Senator. I would like to say mahalo a nui loa for your giving us this opportunity and for the time that you put in. We are very thankful for that.

John Simeona, who is the President of Hui Maka Kilo, will speak first and introduce what the panel is going to discuss.

The CHAIRMAN. Mr. Simeona.

STATEMENT OF JOHN I. SIMEONA, COFOUNDER AND CHAIRMAN, HUI MAKA KILO, INC.

Mr. SIMEONA. Mr. Chairman, Senator Inouye, aloha auinala.

As one of the founders and charter members and president of Hui Maka Kilo, Inc. and on behalf of Hui Maka Kilo, Inc., I would like to say mahalo a nui loa for this special privilege of giving testimony in your office.

My name is John I. Simeona. I am a native Hawaiian born in Keaukaha, Hilo, Hawaii on Hawaiian homestead land. Keaukaha has taught me many things—love of my parents; the love of my native land, Hawaii, and my heritage as a Native Hawaiian, and the love for a country called America.

I am the father of seven boys and six girls of whom I can be proud. They are all Native Hawaiians. They are situated in all parts of America and Hawaii. I am also proud that I am a Native Hawaiian and live on homestead land. I am a retired supervisor at Pearl Harbor from the U.S. Government, and now I am involved in community awareness. I am proud that I can speak the Hawaiian language and read and write Hawaiian. I am proud of my American citizenship. I am proud enough to say that I served my country in Europe during the Second World War.

Native Hawaiians are the most blessed people in the United States as well as in the State of Hawaii. Our children have a rare privilege of being able to apply for homesteads, farm lands, and pastoral lands with Hawaiian homes while others of the same age of other nationalities cannot. As Native Hawaiians, we are recipients of the general funds of the State of Hawaii and of the benefits of the ceded lands revenues. As native Hawaiians, we have the same privilege of attending school and obtaining an education offered by the State of Hawaii's educational system.

Today, some of our native Hawaiians and Hawaiians do not appreciate this choice of special privilege. We murmur and grumble. Members of Hui Maka Kilo, Inc. feel differently, for we are thankful for the freedoms which are ours and those of our children.

As native Hawaiians, yes, we agree with our people of Hawaiian ancestry that the overthrow of the Queen and her government was illegal and that there should be a public admission made by the United States of America regarding its accessory to the overthrow of the Queen and her government. Yes, we agree that an apology is in order and that it must be made by the United States of America and that it be done publicly.

We also would like to have an apology be made publicly by the instigators of the overthrow or made by their survivors to the Hawaiian people, namely, L.A. Thurston, Henry Waterhouse, W.R. Castle, W.O. Smith, A.F. Judd, P.C. Jones, W.C. Wilder, S.B. Dole, Cecil Brown, S.M. Damon. C. Bolte, John Emmeluth, J.H. Soper, and C.L. Carter.

We do not accept nor do we suggest any of the options recommended by you, namely, (1) authorized citizens to refer the Hawaiian claims question to the U.S. Claims Court through a Senate Resolution, (2) to create a Congressionally appointed commission to study the historical events surrounding the overthrow of the Hawaiian monarchy, or (3) that Congress could pass legislation to establish another Presidential commission.

It is now my responsibility to introduce to you our panel who will give testimony and recommendations regarding reparations. First of all, we, Hui Maka Kilo, Inc., agree with all others that reparations are due the Hawaiians from that injustice to the Hawaiian in that this injustice did deprive us Hawaiians of our Queen and our right to be a nation among nations of the world.

Senator, you have before you our statements, and within that statement, you have Annex 1 which is titled "Reparations and Self-Government." Here on our panel we have Mr. Kepo'o, past president of Hui Maka Kilo, Inc. and now advisor to the president; Mr. Frank Nobriega, Kahu, Hui Maka Kilo, Inc; and myself, John Simeona, president, Hui Maka Kilo, Inc. Each of us will be speaking on each item as indicated on Annex 1.

Senator, when we, Hui Maka Kilo, make these recommendations to you and your committee, we would like to call your attention to the present governmental setup of the State of Hawaii and the United States of America in that there are already built-in agencies from which we can draw to satisfy reparations for the Hawaiian and also in matters pertaining to self-government. This means that there is no need to form any other new agencies to be able to receive these reparations.

We would like to say at this time that the purpose of Hui Maka Kilo, Inc. is to assist the Hawaiian Homes Commission and the Office of Hawaiian Affairs in accomplishing their goals for the betterment of the native Hawaiians who are actually the root of all Hawaiians. Once this has been accomplished, Hui Maka Kilo, Inc. will then, and only then, close its doors to business and work with the Hawaiian Government for the betterment of conditions for native Hawaiians.

In my part of our presentation which is square 1 on your Annex, I will refer my remarks to "land base" which will be later known as the Council on Land Affairs. It has been recommended by others that the Hawaiian Government must have a land base, and it was recommended in order to satisfy the problem that all of the land what were with the Hawaiian Government be returned back to the Hawaiian Government.

Well, we differ in that we are not asking nor are we recommending that all those lands be returned back to the Hawaiians under reparations. These are our recommendations:

One, that those lands that are already purchased by legal title, et cetera, remain with its owner or owners;

Two, that the ceded lands be the same and are to remain with the State of Hawaii and shall be governed by the provisions so legislated;

Three, that the Hawaiian Homes Land Trust be given to the Hawaiian Homes Commission in its entirety, meaning that all 200,000 acres be returned back to the Hawaiian Homes Land Trust;

Four, that all current leases of Hawaiian Homes lands which are leased by people, parties, or otherwise who are not of Native Hawaiian ancestry shall end at the date and time of the formation of the Hawaiian Government;

Five, that treaties be made by the Hawaiian Homes and the people, person, or otherwise regarding these leases but that all lands designated as Hawaiian Homes lands shall become the property of the Hawaiian Homes and shall be a part of the Council of Land Affairs in the Hawaiian Government.

An important matter here is if there is to be self-government granted to the Hawaiians, we therefore highly recommend that the Hawaiian Homes be given its freedom and become a part of the Hawaiian Government. What it boils down to mean is that the State of Hawaii shall have no more jurisdiction over the Hawaiian Homes.

We also recommend that those lands that are considered or designated as historical sites and are of Hawaiian value are to be returned and placed under the Hawaiian Homes whose name will no longer be known as such but as the Council of Land Affairs. Also, it is recommended that where there are lands that have been designated to be of Hawaiian religious significance, they shall be turned over to this Council of Land Affairs and shall become a part of the Hawaiian Government.

This recommendation will enable all Native Hawaiians to obtain lands, and when all Native Hawaiians have received their lands, then and only then shall these lands be given to the Hawaiians.

Being that there shall be a Hawaiian Government established as will be presented by Mr. Kepo'o of Hui Maka Kilo, Inc., it will legislate for the establishment of a Hawaiian habitat within the State of Hawaii with the purpose of promoting and perpetuating the Hawaiian and also to preserve it. It is proposed by Hui Maka Kilo, Inc. that those places which have been given to Hui Maka Kilo, Inc. to work and live be designated as Hawaiian habitat. They are, namely, Waikan Valley and Kukuopea in Kona on the Island of Hawaii. We will also seek to establish those Hawaiian Homes lands at Kau and those lands near South Point, Ka Lae.

Hawaiians need places like these to do whatever they want in promoting and preserving their culture and not like that of the PCC. There is no place in Hawaii where we can say it is truly Hawaiian.

Mr. Chairman, I would like to thank you very much for the privilege of being here today to give our testimony here from Hui Maka Kilo. Thank you.

[Prepared statement of Mr. Simeona appears in appendix.]

The CHAIRMAN. I thank you very much, Mr. Simeona.

Who wishes to testify now? Mr. Kepo'o.

Mr. KEPO'O. Yes, Senator.

The CHAIRMAN. Please proceed.

STATEMENT OF ARTHUR F. KEPO'O, COFOUNDER AND ADVISER, HUI MAKA KILO, INC.

Mr. KEPO'O. Aloha auinala, Senator Inouye, chairman of the committee. Thank you for this opportunity of being able to testify on the important issues now before the Native Hawaiians and Hawaiians.

My name is Arthur F. Kepo'o. I am a native Hawaiian. I was born and raised on Hawaiian Homestead lands in Keaukaha, Hilo, Hawaii. I am proud of my native Hawaiian birth of great native Hawaiian parents, James E. Kepo'o and Helen Kahelemauna Waipa. I am a proud American and proud of my citizenship in this State of Hawaii and proud of serving my country and my island State in volunteering for Korea and Viet Nam. I thank God for the freedoms, the opportunities, and all of those goodies that are mine to enjoy here in this country of freedom.

Hawaii has been my home for the last 59 years, and that is just how old I am today. Hawaii will always be my home, for as a native Hawaiian with no other blood in me, I can go nowhere but here in Hawaii. Other races have other places to go—the Japanese to Japan, the Chinese to China, haoles to the continental United States and other places—but people like me can go nowhere, for we have no mother land that we can call our own other than Hawaii.

Mr. Inouye, you have heard just exactly what this little corporation is all about. Mainly, we are to guide or at least try to guide the Office of Hawaiian Affairs so that it can accomplish its purposes, and you will hear in my testimony and that of the panel that we really do support the Office of Hawaiian Affairs and the Hawaiian Homes Act of 1920.

We, Hui Maka Kilo, Inc., do not accept nor do we suggest nor do we recommend any of your options in solving the issue of the monumental injustice of the Hawaiian people, but we present to you a solution to the problem at hand.

Other organizations have given you their recommendations in the way of points, et cetera. They come and recommend that there be a public apology by the United States of America regarding the deeds or misdeeds of its representatives at the time of the overthrow and subsequent to the overthrow of the monarchy. With this we agree, but we further request and demand that the same be asked of the following instigators who were the ones that caused the overthrow to happen. Had it not been for them, the United States of America would not have been a conspirator to this dreadful act of injustice.

Let the following men or their survivors do as we request, demand, and recommend: L. A. Thurston, Henry Waterhouse, W.R. Castle, W.O. Smith, A.F. Judd, P.C. Jones, W.C. Wilder, S.B. Dole, Cecil Brown, S.M. Damon, C. Bolte, John Emmeluth, J.H. Soper, and C.L. Carter.

Other organizations have given you recommendations on matters pertaining to restitution or reparations of monies in the amount of $1 billion and a return of all of the lands to create a land bank for a sovereignty of self-government. These organizations do not define just how it can be done or how it should be done. We, the heads of Hui Maka Kilo, Inc., come before you with a proposed plan which we feel, should the Congress and the legislature of Hawaii meet tomorrow, could be approved and be carried out immediately.

For the rest of my testimony, I would like to base my comments on the annexes which are a part of our testimony, namely, Annex 1 and Annex 2.

All of the materials or explanations that are within these annexes are already built into the system of the United States of America or within that of the State of Hawaii. This means that it will not take too much time and money to reach a happy solution to the matter of reparations.

I would like to say at this time that we, Hui Maka Kilo, Inc., are in favor of and recommend that reparations be made for that injustice done, and we further recommend that the burden of reparations be extended to and demanded of those men of whom we have just made mention as instigators.

I would like at this time to refer my remarks to Annex 1. The heading is "Reparation and Self-Government." There are four squares, each representing a part of the process of Hawaiian self-government. Each is dependent on the other, and each strengthens the other. Then, we see at the top of these squares agencies of which they are a part or by which they are influenced.

Square 1 which was covered by Mr. John Simeona is about land base. Here we are not asking that all of the lands that belonged to the Kingdom at the time of the injustice be returned back to the Hawaiian people but only those lands as indicated by Mr. John Simeona and then some.

Here we are also recommending that the Hawaiian Homes be removed completely from its ties with both the Federal Government and the State of Hawaii. This means that here we are speaking of self-governance and that the chairman and its commissioners be elected by the native Hawaiians and Hawaiians.

Square 2 which I will explain refers to the Office of Revenue. In order for any self-governing project to be sustained, it must have monies.

Therefore, Hui Maka Kilo, Inc. is recommending the following:

That the ceded lands remain in the hands or control of the State of Hawaii and that the revenues thereof be turned over to the Hawaiian Government as prescribed by law, with the exception that the provisions of section 4 of Article XII Hawaiian Affairs or the revised statutes of Hawaii be adhered to in its meaning which is, "The lands granted to the State of Hawaii by the Admission Act, better known as the 'public trust,' shall be held by the State as a public trust for Native Hawaiians and the general public." This means that every dollar received from this public trust be divided equally, 50 cents to the Native Hawaiians and 50 cents to the general public.

OHA has not received its fair share since 1980. This figure would amount to approximately a retroactive payment of about $16 million owed to the Native Hawaiians by the State of Hawaii.

It is also recommended by Hui Maka Kilo, Inc. that all of the military properties which are ceded lands in the sense that they were Hawaiian lands, when returned to the State of Hawaii, will become a part of the ceded land bank and be returned to the Hawaiians. Our recommendation does not mean that we are to take the lands physically and remove the armed forces.

What we are saying here is that on paper we become the landlords of these lands and that the United States of America lease the lands from the Hawaiians. These leases can be likened to the leases of other countries' lands. The leases can be as low as 1 cent per square foot or higher as agreed by both parties. These moneys shall be handled by the Office of Revenue.

It is also recommended by Hui Maka Kilo, Inc. that the Island of Kaho'olawe be returned to the Hawaiians. It is also recommended that the island still be used as an invasion exercise area and a bombing area just as the Pohakuloa area on the Big Island and that present restrictions be continued such as the historical sites or any other sites of historical concern to the Hawaiian people.

It is recommended that a fee be charged of the users by the Hawaiians for the purposes of bombing or invasion exercises by the user. As an example, whenever any country uses that island for bombing exercises, they will be charged a fee of, say, $1 per pound of bomb or 50 cents per pound of vehicle or mechanized equipment or $1 per person used in the exercise.

These moneys, when collected, will be turned over to the Office of Revenue. Also, after every exercise, the area must be policed up by the user.

The third square has to do with governing agent. Here, we recommend that whenever and wherever there is a need for governing of the Hawaiians that the Office of Hawaiian Affairs be known as the legislative, executive, and judicial bodies of the Hawaiians.

Now, there are amendments which need to be made, such as the trustees will no longer be called trustees, nor will there be only nine of them. The trustees will now be called "Council of Chiefs" and shall have as many chiefs as there are Hawaiian habitats or communities. These chiefs shall be elected by their respective habitats or communities. It shall be from this Council of Chiefs that the ranking chief will be elected by the Hawaiian people, for example, the high chief and others, each according to the rule of the Hawaiian and that all are elected.

The last square which is very important to the Hawaiians and has been in ancient times is religion. This religion we speak of and would like to recommend will be the true religion of Hawaii. This, of course, will be remarked on by Mr. Frank Nobriega.

In summation, Mr. Inouye, we have given you actually nothing new, for all that we have presented to you as our recommendations are built into the American system for the sake of the people. In the Admission Act, the ceded lands are mentioned. In the Constitution of Hawaii, the Hawaiian Homes is mentioned. In the revised laws of Hawaii, the Office of Hawaiian Affairs is mentioned. In the revised laws of Hawaii, the entitlements for the Native Hawaiians are mentioned. All in all, we are not saying new things. All that we are doing is emphasizing them and strengthening them.

One of the greatest powers that the Hawaiians have now is that given by legislative power which is recognized by the courts of the United States all the way up to the Supreme Court of the United States of America. There is no need for the Hawaiians to set up a new agency, nor is there any need for the Hawaiians to set up a special tribe so as to receive reparations in whatever form they come.

All that is needed for self-government is to have the Office of Hawaiian Affairs break its ties with the State of Hawaii and that Hawaiian Homes, too, break its ties from the State of Hawaii and the United States of America. But Hui Maka Kilo, Inc. does not agree that we lose our American citizenship. We retain our American citizenship with its freedoms and benefits, for as a retired Army officer, I would certainly lose my pay and the benefits thereof. Also, our senior citizens would lose all of their benefits such as social security.

Yes, in order to maintain such freedoms and benefits, we must participate in whatever is American such as paying taxes. However, these shall be in contributions rather than in individual taxing.

In conclusion, therefore, Mr. Inouye, we know that beyond any shadow of a doubt, our recommendations are workable and that the expediting of the solving process of reparations can be accomplished, that we are to take each block one at a time.

Therefore, we have presented to you our time schedule in Annex 2. It is hoped that these recommendations will assist you and your committee in solving this big issue.

My last comment is that there are two things which we can do in speeding up the process, and they are: one, removing the Office of Hawaiian Affairs from the State of Hawaii and placing that office as the Hawaiian Government; and, two, the removal of the Hawaiian Homes from the State of Hawaii and placing it in the Hawaiian Government as the Office of Lands Affairs for the Hawaiians and, as John Simeona has remarked, that all 200,000 acres of lands be returned to the Hawaiian Homes.

May I again take this opportunity to thank you and your staff for your cooperation with us and especially thank you for your great concern for the Hawaiian people. God continue to bless you. Aloha a nui nou.

[Prepared statement of Mr. Kepo'o appears in appendix.]

The CHAIRMAN. I thank you very much, Mr. Kepo'o.

Now, we will hear from Mr. Frank Nobriega.

STATEMENT OF FRANK NOBRIEGA

Mr. NOBRIEGA. Thank you for this opportunity.

First of all, I need to thank John Simeona and Mr. Kepo'o for allowing me to speak with Hui Maka Kilo on the area of religion.

To give some background, my representation is with the Temple of Loano. To give you a background on the Temple of Loano, the Temple of Loano was created by myself and Sam Loano in 1978 when the Religious Freedom Act of Public Law 95-341 came out.

The reason for its creation was that Mr. Loano wanted to protect the ahupua'a or what is recognized as the seat of Loano, the priesthood of Loano. If we go back in Hawaiian history, the religion as far as temple knowledge went into hiding. In 1978, when Sam came out was to bring out the knowledge of the temple.

The first temple that we sought access to was on Federal lands. The temple was the temple at Mo'okapu, the Temple to Kueahina. We got access to the temple and Mr. Loano performed a ceremony.

Our concern on reparations is that Hawaiian religion is not recognized. The temples are not recognized.

Our second access for religious preference was into Kualoa Park. The reason for Kualoa Park is that Kualoa Park is the puanua leahua.

Now, our concern is that the temples become a part of the reparations, that the knowledge that has been collected by the Temple of Loano can be facilitated in its traditional realm.

My concern in this was that when the Temple of Loano came out, there was a lot of criticism that we were trying to gain access for our own personal gains. The reason for access is this: the temple of Kueahina, in order to bring it out, you must know the mo'olealo. Let me explain how it was passed on to me of what happened.

The first religions battle in our history is the battle at Kaloko. Kaloko was a holocaust.

The second area of concern to us was the mui kalohi laws. The mui kalohi laws banned ancestral worship for Hawaiians. What this means is that it is a total genocide. The fortunate part is that the temple knowledge went into hiding prior to this. In order to bring it out, one must have the mo'olealo of the temple, and these are the things that the Temple of Loano would like to facilitate.

Why? Because of being one-half Hawaiian and one-quarter Jewish. When we went into Mo'okapu, we were asked, could you build your temple or could you reerect your church in another area? I don't think, coming from Jewish background too, that you can remove the Holy Land.

There are four puhanuas—puhanua lehua, haleokeawe, puhanua pi'ilani, and the puhanua in Kauai to Kuhaimuana. These are sanctuaries of peace. We are considered a warring culture, but we are the only culture to have a sanctuary of peace.

When we wanted access to Kualoa which involved the State, we were arrested, and I and other people face a one to two-year term for practicing our religion. We used Public Law 95-431 to get into Mo'okapu. There was no lawyer.

When we talk about sovereignty, the American government gives us sovereignty in the First Amendment with freedom of religion. When you talk about a land base for indigenous people for sovereignty, then we are talking about the temple. This is not creating a new nation. This was set as a precedent by our forefathers.

If the Indian can claim the Black Hills, can we not have our temples to Kueahina and the puhanua?

There will be a lot of discussion that, you know, there are a lot of temples here, but the temples that I talk about are the temples out of the caste system of the kahuna. A lot of us, when we saw what was going on didn't see what was going on behind that. Those of us who were doing research—it was Thrum who identified the seat of Loano. He said he was 50 years too late, but there is just never like telling.

When Mahia Loano passed on orally the knowledge of the temple to Huo'opili, one of the questions put to Mahia by Huo'opili was why didn't he come out and help the Kingdom, because Mahia sought refuge in Kawaihai as a fisherman. He said he could not come out; he could not help. It was not until the development of the Temple of Loano that we found in the legal archives the mui kalohi laws.

This is very important, because the mui kalohi laws banned our race in ancestral worship, malama puola, unahiapili, ho'omanakea, ho'omanamana, a'akualeale. These are our ancestral worship.

The puhanua—at one time, the Federal Government wanted to create a sanctuary of peace because of nuclear war today, that we need to find a sanctuary of peace. What they wanted to do was to reinstitute something like the Hawaiian culture as a sanctuary of peace, but it had a spiritual point.

In the puhanua were the bones of the politu. Just as a point of reference, the caste system of the priesthood, kahuna can climb to the top of the mountain. Kahuna nui can climb to the top of the mountain and stand. Kahuna politu can speak. We all know that kua law is at the point of the Temple of Politu.

So, I am confused as a Hawaiian of my generation when we talk about a separate nation. Sovereignty is the freedom of religion. The land base is the temple.

What we wish is that the reparations include these temples. I as a Hawaiian cannot sell back the Bible to the person who sold it to me originally, and it was on this premise that we sought to find traditional knowledge, and it was on this premise that Sam Loano came out in 1978 to use Public Law 95-341, because it gave us as indigenous Americans the right to practice and the right to access, but it also created a problem for our State, for they wish for us to create another temple or build another church in a different area when, traditionally, these areas were picked spiritually for their mana and their sauce.

So, these are the concerns of the Temple of Loano. It is that the temples become a part of the reparations, that the knowledge of these temples be facilitated and that the history of kualoko, the history of the mui kalohi laws become a part of our education.

Thank you.

The CHAIRMAN. Thank you very much, Kahu Nobriega.

Mr. NOBRIEGA. I have one correction on the kahu. I am not a kahu.

The CHAIRMAN. The correction is noted, Mr. Nobriega.

The record of these proceedings will be kept open until September 6. If any of you wish to submit supplemental testimony or new testimony, please do so by September 6. At that time, the record will be closed so that we can begin our report and consideration of what we have heard.

With that, I would like to thank all of you for bearing with us these days and for submitting your testimony and your advice to us. We thank you very much.

The hearing is adjourned.

[Whereupon, at 3:15 p.m., the committee adjourned, to reconvene at the call of the Chair.]

APPENDIX

Additional Material Submitted for the Record

1959

STATE OF HAWAII
OFFICE OF HAWAIIAN AFFAIRS
1600 KAPIOLANI BLVD., SUITE 1500
HONOLULU, HAWAII 96814
(808) 548-8960

TESTIMONY OF MOSES KEALE, SR.
Chairman, Board of Trustees
Office of Hawaiian Affairs

I. Introduction

Ano'ai kakahiaka kākou. Good morning Senator Inouye. I am Moses Keale, Sr., Chairman of the Board of Trustees of the Office of Hawaiian Affairs. I am honored to present our testimony to you and thank you for your continuing efforts to aid our claim for reparations and restitution.

As you know, the Office of Hawaiian Affairs (OHA) is a unique entity, created by amendment to the state constitution in 1978 to serve the native Hawaiian people. OHA is governed by a nine-member Board of Trustees, all of whom must be of Hawaiian ancestry. The current trustees were elected by almost 60,000 registered Hawaiian voters. As a result, the OHA Trustees are directly accountable to the Hawaiian people. The OHA Trustees are designated by the people to represent them and act on their behalf, fulfilling the same role as a council of chiefs does among other native groups.

OHA was established to work for the betterment of conditions of all Hawaiians and was viewed by its creators as a crucial step on the path to Hawaiian self-governance. OHA is the principal public agency in the state responsible for the performance, development and coordination of all programs and activities impacting on Hawaiians. Another important purpose of the Office is to serve as a receptacle for any reparations forthcoming to the Hawaiian people. Consequently, OHA is vitally interested in and has taken an active role in advancing the Hawaiian claim for reparations and restitution.

II. The Claim of the Hawaiian People for Reparations and Restitution from the Federal Government is Solidly Based in Law and Equity; Redress is Long Overdue

The claim of the Hawaiian people for reparations and restitution from the United States government is almost too well known to justify repeating in detail. Nonetheless, I feel that I must begin this testimony by stating once again that the Trustees of the Office of Hawaiian Affairs and the entire Hawaiian community believe that the United States government violated international law and committed a grave injustice in 1893 when its agents took the actions that led to the overthrow of the Kingdom of Hawaii and later to annexation of Hawaii to the United States.

We continue to insist that these injustices must be acknowledged and that lands and money must be returned to the Hawaiian people to repair the damage and restore Hawaiians to a position of dignity and greater autonomy in the Hawaiian islands. It is deeply rooted in American tradition, and in the values that have guided this nation, to acknowledge such past injustices and to formulate an appropriate remedy for the wrongs that occurred. It is also increasingly recognized in international law that native peoples have unique rights and a special status which requires conquering nations to respect their independence, their land rights, and their culture.

The basis for the claim of the Hawaiian community can be summarized quickly, drawing upon uncontroverted facts found in the majority report of the 1981-83 Native Hawaiians Study Commission.

It is uncontroverted that President Benjamin Harrison indicated in 1892 that his administration was "exceedingly sympathetic" to the idea of annexing Hawaii to the United States (Native Hawaiian Study Commission, Volume I, page 289, quoting Thurston, Memoirs of the Hawaiian Revolution, at 229). It is uncontroverted that John L. Stevens, the U.S. Minister to Hawaii (today we would call him the U.S. Ambassador) "held strong annexationist views from the beginning, and this was well known in the Hawaiian community." (Id. at 294.) It is uncontroverted that Minister Stevens ordered marines and sailors from the U.S.S. Boston to come ashore on January 16, 1893, that they took up a position between the Government Building and the Palace -- "an ideal location from which to participate in any conflict," and that "their presence provided a psychological support to the revolutionists" and "served to demoralize the monarchists." (Id. at 296.) It is also uncontroverted that Minister Stevens recognized the "Provisional Government" of the annexationists before

Queen Lili'uokalani had resigned or yielded her authority. (Id. at 297.)

Despite these uncontroverted acts of direct and gross interference into the affairs of an independent and sovereign nation, the Native Hawaiians Study Commission's majority concludes that "native Hawaiians should not receive reparations" (Id. at 28), because the actions of Minister Stevens were not based on "express authority from the United States Government." (Id. at 25.) These conclusions are reached without analysis or explanation and fly in the face of the factual material in the majority's own report. The majority's report fails to address the responsibility of a nation for the actions of its duly appointed agents, even though international law and U.S. domestic law consistently have concluded that such responsibility exists. One can only conclude that the majority's decision to reject the claim was reached without regard to the facts. The majority's perspective must therefore be rejected.

The claim of the Hawaiian community for the loss of sovereignty and the loss of land is strong and compelling and must be vindicated. The lands which were lost, the approximately 1.75 million acres of Government and Crown lands, were lands that were held by the Hawaiian government in trust for the Hawaiian people. The Crown lands were an integral part of the Hawaiian social and political structure and represented a traditional and common source of wealth for the people as a whole. The Government lands had been specifically set aside by Kamehameha III for the benefit of the the chiefs and people. As a result of American intervention in the internal affairs of the Hawaiian Kingdom, these lands were confiscated by the Provisional Government, transferred to the Republic of Hawaii, and ultimately were ceded to the United States. This transfer occurred without the consent of the native Hawaiian people, without compensation of their interests, and without any explicit protection of their interests. To this day, the federal government continues to control large portions of these lands for military and other purposes.

III. The Majority Report of the Native Hawaiians Study Commission Is Fatally Flawed and Its Conclusions Must Be Rejected

While I wish to focus most of my testimony on the suggestions proposed in Senator Inouye's letter announcing this hearing, the Trustees felt it was necessary to make a few comments about the majority report of the Native Hawaiians Study Commission. As you know, we believe that the conclusions of that Commission as it relates to the events of 1893 and the legal basis for reparations are fatally flawed. In previous hearings held before the Senate Committee on Energy and Natural Resources in 1984, legal experts, historians, and others, criticized the methodology, analysis, and conclusions of the majority. I do not want to take the time today to reiterate those points, but would like to discuss the question of agency in a bit more detail.

The majority report concluded that reparations were not owed to native Hawaiians because the actions of Minister Stevens were not expressly authorized by the United States government.

As a general rule of international and agency law, however, a government is responsible for acts of its agents regardless of whether such acts were specifically authorized by the government. The issue is not one of express authority to act, as the majority report attempts to frame it, but whether the apparent and inherent authority of the United States possessed by its agent (Stevens) was rightfully or wrongfully exercised. Under international and domestic law, the United States is responsible for the actions of its agents when they act within areas where they appear to others to have authority even if the U.S. government did not specifically authorize those acts.

The agent-principal relationship is essential to government. It is necessary that governmental authority be delegated to agents who will act on the government's behalf. A government cannot enforce its laws or carry out its policies except by acting through its official agents. Agents, therefore, have authority to act for their principle, the government. Such agency authority was particularly essential to the functioning of diplomacy in the 19th century. United States agents overseas were so physically isolated from their superiors that their ability to represent U.S. interests would have been hopelessly paralyzed by a requirement that each of their actions be subjected to prior review and express approval.

A nation bears general liability for the unauthorized actions of its administrative agents and military forces which "fall within the normal scope of their duties" or are "committed in the exercise of their official functions." Under international law, a nation can mitigate its responsibility for unauthorized actions of its agents by apologizing, disciplining the agents involved, and compensating the losses resulting from their actions. If it does not, then the nation bears full responsibility for the acts. Stevens' superiors in the State Department neither disavowed, rebutted, or revoked the actions of their agent. Thus, according to the principles of agency and international law, the actions of Minister Stevens were the actions of the United States.

The theory behind this rule of liability rests on two sound principles. First, the government or employer of the agent is better able to absorb the loss and spread it among the citizenry than is the victim. Second, the government that employs the agent is in the better position to prevent the loss in the first place by more carefully selecting the agents to whom it gives authority and by better training them about their responsibilities.

If we apply this principle to the actions of Minister Stevens in 1893, it is clear that the United States is liable for the harm suffered by native Hawaiians. The United States had the capacity to select its agents carefully and the opportunity to train them about the proper use of U.S. authority. If a government sends agents to an island kingdom over 5,000 miles away from the government's capital, the government must expect the agents to exercise discretion when using their power. A government must therefore anticipate the types of actions that are appropriate and instruct the agent with some care. If the government fails to instruct its agents, and the agents use their power to harm the citizens of the Kingdom, the government that sent the agents with their military power must logically bear responsibility for the agents' action.

As applied to Hawaii, the liability of the United States should be obvious. Minister Stevens' actions were not unexpected by the administration in Washington, and he undoubtedly felt his actions would be viewed with approval by the Harrison Administration. As noted earlier, Minister Stevens was identified by the Native Hawaiians Study Commission's majority report as favoring annexation, and President Harrison also let it be known that he was "exceedingly sympathetic" to annexation.

The total failure by the Native Hawaiians Study Commission's majority to consider these fundamental principles of international and agency law can only lead to the conclusion that the majority report is flawed and must be rejected.

IV. The Office of Hawaiian Affairs Does Not Support Submitting the Claim of the Hawaiian People to the United States Claims Court, But Has Other Ideas to Promote Action on this Claim

The Office of Hawaiian Affairs does not support the suggestion to submit the claim of the Hawaiian people for reparations and restitution to the United States Claims Court. The idea of taking our claim to court and having it determined once and for all has a certain simplistic appeal to it - we would be in a different forum, ostensibly one more neutral and open to our claim.

Our research into the record of the Claims Court, its handling of other native claims, and the Congressional case reference procedure has, however, led us to conclude that it would not be advisable for the Claims Court to consider our claim. Although our claim is well founded in law and equity, we do not wish to submit the claim as an all-or-nothing package to a panel of judges who have no background or experience in this issue. Moreover, in other native claims, the Claims Court too often has taken an overly narrow and technical view which has been detrimental to the native cause. Finally, the procedures to be followed in a case referred by Congress are unclear and murky at best and there would be no appeal to a higher court should the Claims Court reject our claim. Consequently, although we appreciate the sincerity of your efforts to find new ways to support our claim, we are strongly opposed to this proposal.

The Trustees of the Office of Hawaiian Affairs feel that the best way for the United States to establish a new and more honorable relationship with native Hawaiians is through direct legislation enacted by the U.S. Congress. To that end, we reaffirm our commitment to obtaining restitution and reparations and would like to outline the elements that should be part of a reparations package:

1) The United States must acknowledge the wrong and apologize for the role it played in the events of 1893.

2) The Hawaiian people have the right, along with other native people, to seek sovereignty and self-determination. The Hawaiian people were once part of an independent nation

participating fully in the family of nations until agents and troops of the United States government acted to overthrow this nation in order to incorporate Hawaii unto the United States of America. The Office of Hawaiian Affairs, conceived of and given birth to by Hawaiians, is a first and crucial step in our movement toward self-determination. Currently, OHA is the entity which is most truly representative of the Hawaiian community and the will of the Hawaiian people. Article XII, Sections 5 and 6, of the Hawaii State Constitution authorize OHA to hold in trust lands and monies set aside for the Hawaiian people. Pursuant to Hawaii Revised Statutes, Section 10-3(6), OHA is designated to serve as the receptacle for reparations and the Trustees believe that OHA is the most appropriate entity to receive reparations at this time. OHA will continue to play a vital role in the process of self-determination and OHA expects the United States to recognize the right of native Hawaiians to self-determination and sovereignty.

3) The United States and the State of Hawaii must return lands and natural resources to native Hawaiians through the Office of Hawaiian Affairs. Such lands should include Hawaiian Homes Lands, portions of the ceded lands trust, lands under federal control such as Kaho'olawe, Bellows, and other appropriate lands. The United States should also acknowledge the legitimate interest of native Hawaiians in the resources of the submerged lands and the ocean resources of the Hawaiian islands.

4) The United States and the State of Hawaii must recognize and protect certain native rights such as beach access,

fishing, hunting, and gathering rights, native Hawaiian religious practices, and historic and cultural sites. Additionally, we wish to strongly state that our native rights cannot and must not be extinquished in any reparations process. These are rights which must be preserved for future generations and consequently, cannot be extinguished by our generation.

5) The United States must make an appropriate monetary payment to native Hawaiians, through the Office of Hawaiian Affairs, to compensate them for past losses and lands retained by the federal government, and to allow the native Hawaiian community to take advantage of its land and resource assets.

Again, we believe that direct legislation by Congress, guided by these principles, is the best, most appropriate, and just way for the United States to deal with the reparations issue.

If, however, it is necessary to have some new body look at this claim before Congress acts, we have several suggestions to offer. The most important criteria for any new body would be to ensure that its members are experts on issues related to native claims and native rights. We would like to avoid at all costs a rerun of the 1981-83 Native Hawaiians Study Commission, whose six-member majority consisted of individuals with no background or real interest in native claims, native Hawaiians, or Hawaiian history.

The most appropriate new body to examine our claims would be one comprised of some individuals appointed by the national government and some appointed by the Hawaiian people. One approach would be to model such a body on the conciliation commissions sometimes established to address disputes between nations. Under this approach, the President might nominate two members, the Hawaiian people, through the Office of Hawaiian Affairs, might nominate two members, and those four individuals would pick a fifth member. If all these individuals had backgrounds in native issues, then all sides could be confident that their recommendation would be well-founded in law and policy.

Such a body would be preferable to a judicial tribunal because it would have the flexibility to examine all sides of the issues and could mold a remedy that would be reasonable in present circumstances. In contrast to a judicial body, which is trained to rule firmly in favor of one side or the other in an "all-or-nothing" fashion, a conciliation commission would be expected to chart more sensitively through the difficult issues in search of a solution that takes all concerns into account and then determines the fair and just solution. This type of a conciliation commission would be the most appropriate body to review our claim, if a new body is thought to be necessary.

The other alternatives that have been suggested involve a new Presidential commission -- like the 1981-83 Native Hawaiians Study Commission but presumably with more enlightened members -- or a congressionally-appointed commission. We would not oppose the creation of such a body and would work with it if it comes into being. We would insist, however, that its membership be structured to avoid the bizarre charade that occurred with the

1981-83 Commission. We would insist that the members of such a commission be eminent individuals with stature and prestige based on their accomplishments and service to the cause of social justice. We would also insist that they have background and training in issues related to native cultures and peoples. The members need not necessarily be U.S. citizens. In fact, it would be desirable to have some members who have worked with natives and native claims in Canada, New Zealand, Australia, and other nations with indigenous populations. Individuals connected with national, international, or nongovernmental human rights organizations might also be appropriate. Perhaps the most important element would be to ensure that the Office of Hawaiian Affairs and others in the Hawaiian community have active input into the membership of a new commission and that all members of the commission have the complete respect and confidence of the Hawaiian people.

If a new body is to be constituted, its focus should be narrow. The Native Hawaiians Study Commission used a broad brush to touch upon many aspects of the culture and economic and social status of the Hawaiian people. A new body should instead focus on the narrow question that the majority report of the Study Commission failed to address satisfactorily: What are the legal, equitable, and moral consequences of the deep involvement of the United States and its agents in the overthrow of the Hawaiian monarchy? We would also insist that any new commission be adequately funded to insure that these issues are examined with the depth and care required.

We greatly appreciate the interest of this Committee and its staff and the entire Congressional delegation from Hawaii in our claim and we look forward to working with Congress to develop a package that will settle this claim in a fair and just manner. We are now in the process of developing legislation which will be submitted in the near future. I will be happy to answer any questions the Committee or staff members may have.

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ALU
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AUGUST 26, 1988

TESTIMONY RELATING TO NATIVE HAWAIIAN REPARATIONS

Aloha, Mr. Chairman, members and staff of the Senate Select Committee on Indian Affairs. My name is Masaru Oshiro, Chief Executive Officer of ALU LIKE, a private, non-profit community-based organization serving the Native Hawaiian people statewide.

Since 1975, ALU LIKE has provided a full range of human services in partnership with Federal, State and private corporations.

We have followed the course of the 1983 Native Hawaiians Study Commission and expressed our disappointment on its findings. In January 1986, ALU LIKE responded to a proposed Native Hawaiian Claims Settlement Act by supporting the provision which whould have Congress recognize the United States' participation in activities contributing to the overthrow of the Hawaiian monarchy in 1893; that the U.S. participation was opposed by Native Hawaiians; that U.S. participation violated Hawaii's right to independence and violated the principle of non-intervention in the internal affairs of another nation; that the U.S. has a moral and legal obligation to provide reparations to the Native Hawaiians and that the purpose of the Act be provision of

A private, nonprofit 501 (c)(3) community based system for Hawaiian economic and social self-sufficiency.

E alu like mai kākou, e na 'ōiwi ō Hawai'i
Let us work together, natives of Hawaii

reparations to Native Hawaiians. ALU LIKE also supported the proposed legislation defining "Native Hawaiians" as any individual whose ancestors were native to the area that constituted the Hawaiian Islands prior to 1778.

We strongly believe that a thorough and unbiased study of the historic events leading up to, including and following the overthrow must be done to replace the findings in the current report. In order to pursue this, ALU LIKE supports an approach which would establish a Congressionally-appointed commission to study the historical events surrounding the overthrow of the Hawaiian monarchy and make recommendations based on its findings. As stated in your July 12, 1988 letter, such a commission would be composed of members of both houses and represents both the majority and minority parties. Experts who have thoroughly researched these events must be involved as commissioners or appointed in an advisory capacity. These experts should be Native Hawaiians, Native Americans or individuals who have demonstrated expertise in the area of Native American issues and law.

We applaud the Senate Select Committee's decision to rehear this issue and look forward to participating in future deliberations to correct this historical injustice. Mahalo for this opportunity to testify.

Masaru Oshiro, President/CEO
ALU LIKE, INC.

Testimony Presented at
U.S. SENATE HEARING
26 August 1988
East-West Center

By
KINA'U BOYD KAMALI'I

GOOD MORNING, SENATOR INOUYE, AND THANK YOU FOR THE OPPORTUNITY OF TESTIFYING THIS MORNING.

BEFORE I OFFER MY COMMENTS ON THE SUBSTANCE OF THIS HEARING, I WOULD LIKE TO EXPRESS MY PERSONAL MAHALO NUI LOA TO YOU FOR CALLING AND CONDUCTING THIS MEETING. YOUR COMMITMENT TO SEEKING JUSTICE FOR THE HAWAIIAN PEOPLE HAS BEEN UNWAVERING.

AS IMPORTANT, YOUR COMMITMENT HAS BEEN POLITICALLY RESPONSIBLE. LIKE YOU, I HAVE KNOWN FIRST-HAND THE POLITICAL IMPOSSIBILITY OF PURSUING NATIVE HAWAIIAN CLAIMS FOR NATIONAL RESTITUTION UNDER THE PRESENT ADMINISTRATION. IT IS WITH A SHARED POLITICAL OPTIMISM FOR A NEW NATIONAL ADMINISTRATION AND A RENEWED FEDERAL SOCIAL CONSCIENCE, THAT I JOIN YOU AT THIS HEARING.

MY REMARKS TODAY WILL FOCUS ON WHAT I BELIEVE ARE THE STRENGTHS OR WEAKNESSES OF THE THREE CIRCULATED OPTIONS FOR FUTURE FEDERAL ACTION ON NATIVE HAWAIIAN CLAIMS. THERE IS THE TEMPTATION TO REVIEW THE HISTORICAL WRONGS OF LOST LANDS AND SOVREIGNTY WHICH DISHONOR THE RELATIONSHIP BETWEEN THE UNITED STATES AND THE HAWAIIAN NATION - BUT IN THIS FORUM, I WOULD ONLY BE PREACHING TO THE CHOIR.

RATHER, I AM AGAIN SUBMITTING VOLUME II OF THE NATIVE HAWAIIANS STUDY COMMISSION REPORT FOR YOUR RECORD.

IT IS ENOUGH TODAY TO SAY THAT IT IS UNCONTROVERSIAL AMONG HISTORIANS TO ACKNOWLEDGE THAT THE UNITED STATES STOLE HAWAI'I FROM THE HAWAIIANS. THE CONTROVERSY INSTEAD INVOLVES WHAT SHOULD AND WHAT CAN BE DONE IN RESPONSE TO THAT HISTORICAL FACT.

THUS, OUR CHALLENGE IN SELECTING A FUTURE PATH IS IN DECIDING WHERE THERE IS THE GREATEST LIKELIHOOD FOR SUCCESS. THIS CHALLENGE MUST BE ANSWERED WITH THE FOLLOWING IN MIND. TO A DEGREE I WOULD HAVE THOUGHT IMPOSSIBLE IN 1983, THERE IS A GENERAL AGREEMENT WITHIN THE HAWAIIAN COMMUNITY AND ITS LEADERSHIP THAT CLAIMS RESTITUTION MUST INCLUDE A NATIONAL APOLOGY, A SETTLEMENT INVOLVING LAND AND MONEY, AND A FORMAL RECOGNITION AND MECHANISM FOR HAWAIIAN SELF-DETERMINATION AND RESOURCES MANAGEMENT.

KNOWING THAT THESE ARE THE ELEMENTS OF SETTLEMENT ARGUES STRONGLY AGAINST THE OPTION OF THE CLAIMS COURT.

FIRST, AND MOST SIGNIFICANT, THE CLAIMS COURT AS NOTED IN THE CONGRESSIONAL REFERENCE CASES IN THE UNITED STATES COURT OF CLAIMS: A HISTORIC AND CURRENT PERSPECTIVE REPORT YOU CIRCULATED, CANNOT AWARD LAND. WITHOUT THAT POSSIBILITY, ANY

SETTLEMENT BY THE COURT WOULD BE VIEWED AS UNSATISFACTORY -- NO MATTER HOW GENEROUS.

FURTHER, THERE IS NO APPEAL OF THE CLAIMS COURT DECISION. ITS RULING WOULD BE FINAL AND COULD EXTINGUISH HAWAIIAN CLAIMS WITHOUT ANY FUTURE RECOURSE. PLEASE DO NOT MISUNDERSTAND MY COMMENT AS A REFLECTION ON THE INTEGRITY OF THE CLAIMS COURT. RATHER, IT IS THE INEXPERIENCE AND UNTESTED KNOWLEDGE OF THE COURT ON HAWAIIAN CLAIMS WHICH TROUBLES ME.

THE HAWAIIAN PEOPLE AND HISTORY ARE PROFOUNDLY DIFFERENT FROM THOSE OF OUR INDIAN COUSINS. YET IT WOULD BE, TO MY MIND, VIRTUALLY IMPOSSIBLE FOR THE CLAIMS COURT TO SEPARATE THEIR ESTABLISHED BASE OF INFORMATION AND ACTION WITH AMERICAN INDIANS FROM HAWAIIAN CLAIMS. AND THAT CONFUSION COULD FATALLY JEAPORDIZE SUCCESS.

THE OTHER TWO POSSIBLE OPTIONS -- A CONGRESSIONAL OR A PRESIDENTIAL COMMISSION -- OFFER GREATER FLEXIBILITY AND ALLOW MORE CREATIVE RESOLUTIONS. HOWEVER, I BELIEVE THERE IS A SUBSTANTIAL DIFFERENCE IN THE POLITICAL EFFECTIVENESS OF THE TWO POSSIBLE COMMISSIONS.

WITH THE NATIVE HAWAIIAN STUDY COMMISSION, WE HAVE EXPERIENCED A PRESIDENTIALLY APPOINTED COMMISSION. UNDER

FUNDED, UNDER STAFFED, AND ACTIVELY UNDER-MINED, THAT COMMISSION MAY NOT BE A FAIR EXAMPLE OF WHAT IS POSSIBLE.

I BELIEVE THAT RODGER BETTS WILL DETAIL THE BUILT-IN FLAWS WHICH SO HAMPERED AND THEN DIVIDED THE FINDINGS AND CONCLUSIONS OF THAT COMMMISSION.

HOWEVER, EVEN AT ITS BEST, A PRESIDENTIAL COMMISSION IS BETTER-SUITED TO ADVISING EXECUTIVE, NOT LEGISLATIVE DECISION-MAKING.

AS WE RECOMMENDED IN VOLUME II, I AM STILL CONVINCED THAT NATIVE HAWAIIAN CLAIMS CAN AND SHOULD BE ADDRESSED THROUGH DIRECT CONGRESSIONAL ACTIONS. THIS ROUTE RESOLVED NATIVE ALASKAN CLAIMS WITHOUT THE PROTRACTED AND EXPENSIVE CLAIMS COURT DELIBERATIONS UNDERTAKEN BY MOST AMERICAN INDIAN TRIBES.

IN ADDITION, NO BETTER EXAMPLE OF THE POLITICAL EDGE AFFORDED BY A CONGRESSIONAL COMMISSION COMES MORE QUICKLY OR PERSUASIVELY TO MIND THAN THE JAPANESE RELOCATION COMMISSION.

WITH A CLEAR MANDATE -- NOT AN AMBIGUOUS CHARGE TO STUDY THE CULTURE OF JAPANESE AMERICANS; WITH INTENSE INVOLVEMENT BY AFFECTED, ELECTED REPRESENTATIVES; AND WITH A DETERMINATION TO DO ALL THAT WAS POSSIBLE TO EXPOSE POSSIBLE GOVERNMENT

CULPABILITY -- THAT COMMISSION OVERWHELMED NATIONAL RESISTENCE BY ARGUING FACTS AND ASSERTING THE SIMPLE NEED FOR JUSTICE.

I CAN STILL REMEMBER WHEN HEADLINES ANNOUNCED THE COMMISSION'S DISCOVERY OF ONCE-UNKNOWN DOCUMENTATION THAT THE GOVERNMENT KNEW IT WAS DOING WRONG EVEN AS IT WAS DOING IT.

I BELIEVE THERE IS SIMILAR DAMNING DOCUMENTS REGARDING THE AMERICAN ARMED INVASION OF HAWAI'I IN 1893. THE PUBLIC RECORD OF DIPLOMATIC CORRESPONDENCE BETWEEN HAWAI'I AND WASHINGTON HAS AN INTRIGING "BLACK SPACE." WE HAVE MINISTER STEVENS WRITING TO D.C. AFTER THE PRESIDENTIAL ELECTIONS OF 1892 RELAYING HIS FEELINGS THAT THE U.S. MUST SOON CHOOSE BETWEEN ACTION TO "PLUCK THE RIPE PEAR" OR WATCH THE KINGDOM DOMINATED BY ENGLAND. WE HAVE NO RECORD OF THE RESPONSE TO THIS REQUEST FOR A DECISION ON WHICH CHOICE THE GOVERNMENT WANTED TO MAKE.

WE ALSO HAVE NO RECORD OF NAVY DEPARTMENT INSTRUCTIONS TO COMMANDER WILTZE.

A SUBSTANTIAL AMOUNT OF RESEARCH WAS COMPLETED BY THE NATIVE HAWAIIAN STUDY COMMISSION. NO FUTURE COMMISSION SHOULD EVER FEEL THAT IT MUST START FROM SCRATCH. HOWEVER, THOSE TANTALIZING GAPS IN OUR KNOWLEDGE COULD PROVE TO BE THE "SMOKING GUN" -- THE EVIDENCE WHICH WOULD ELEVATE THE EVENTS OF

1893 FROM THE ARGUABLE ROGUE ACTIONS OF A SINGLE, DISTANT AMERCIAN MINISTER TO A WILLFUL WRONG BY ONE NATION AGAINST ANOTHER.

JUST AS ONCE-UNKNOWN INTERNMENT DOCUMENTS PROVED FEDERAL AWARENESS THAT THERE WAS NO THREAT FROM AMERICAN OF JAPANESE ANCESTRY IN A TIME OF WAR WITH JAPAN.

IN CONCLUSION, THEN, I WOULD ENDORSE A CONGRESSIONAL COMMISSION COMPRISED OF ELECTED NATIONAL REPRESENTATIVES, KNOWLEDGABLE CITIZENS AND A BUDGET THAT WILL ALLOW THEM TO CARRY OUT THEIR MANDATE. THEIR CHARGE WOULD BE TO CONCLUSIVELY AND DECISIVELY ADDRESS THE EVENTS AND CONSEQUENCES OF 1893. ONCE RESOLVED, THEY WOULD THEN HAVE THE RESPONSIBILITY FOR RECOMMENDING LEGISLATIVE SETTLEMENT.

ONLY THEN WOULD ANOTHER SAD CHAPTER IN AMERICAN HISTORY BE -- NOT CLOSED -- BUT WRITTEN AND LEFT OPEN FOR ALL TO READ AGAIN AND AGAIN AS A LESSON IN JUSTICE.

THANK YOU.

(4)

TESTIMONY OF H. RODGER BETTS
PRESENTED TO
THE UNITED STATES SENATE
SELECT COMMITTEE ON INDIAN AFFAIRS

At Its Hearing Held In
Honolulu, Hawaii, on June 26, 1988

My name is RODGER BETTS. I am an Attorney engaged in private practice of law at 34 North Church Street, Wailuku, Maui, Hawaii, and I am of part Hawaiian ancestry.

Since 1974, I have been substantially involved in the study of events surrounding the overthrow of the Hawaiian Monarchy.

Most recently I served as a commissioner on the Native Hawaiian Study Commission.

The Native Hawaiian Study Commission was a presidentially appointed commission consisting of nine commissioners, six of whom were mid-level executive Federal officers and three of native Hawaiian ancestry from Hawaii. Kinau Boyd Kamalii and Winona Beamer were my fellow commissioners from Hawaii. Kinau served as chairman of the Commission and performed magnificently in that capacity notwithstanding the financial constraints imposed on the Commission which made it extremely difficult or impossible to do a thorough and unbiased study of the matter which is before us today, namely whether or not ....the assumption that the success of the revolution of 1893 and the establishment of the Provisional Government depended on the wrongful acts of the United States Minister to Hawaii and the lawless occupation of Honolulu by the United States Navy is indeed an established historic fact.

President Cleveland in his special message to the United States Senate and House of Representatives dated December 18, 1893 said, in part, as follows:

> " ... The lawful Government of Hawaii was overthrown without the drawing of a sword or the firing of a shot by a process every step of which, it may safely be asserted, is directly traceable to and dependent for its success upon the agency of the United States acting through its diplomatic and naval representatives. ...
>
> " ... By an act of war, committed with the participation of a diplomatic representative of the United States and without authority of Congress, the Government of a feeble but friendly and confiding people has been overthrown. A substantial wrong has thus been done which a due regard for our national character as well as the rights of the injured people requires we should endeavor to repair. The Provisional Government has not assumed a republican or other constitutional form, but has remained a mere executive council or oligarchy, set up without the assent of the people. It has not sought to find a permanent basis of popular support and has given up no evidence of an intention to do so. Indeed, the representatives of that Government assert that the people of Hawaii are unfit for popular government and frankly avow that they can be best ruled by arbitrary or despotic power ...
>
> " ... On that ground the United States can not properly be put in the position of countenancing a wrong after its commission any more than in that of consenting to it in advance. On that ground it can not allow itself to refuse to redress an injury inflicted through an abuse of power by officers clothed with its authority and wearing its uniform; and on the same ground, if a feeble but friendly state is in danger of being robbed of its independence and its sovereignty by a misuse of the name and power of the United States, the United States cannot fail to vindicate its honor and its

sense of justice by an earnest effort to make all possible reparation. ..."

It seems that we must now thoroughly investigate whether or not the President of the United States of America in his message to the United States Congress, in its entirety, made an accurate analysis of the case.

The Majority report of the commission concluded that there is no basis for reparations to the Hawaiian people. The minority dissenting report found to the contrary.

I agree with you, Mr. Chairman, that a thorough and unbiased study of the historic events leading up to including and following the overthrow must be done to replace the findings or confirm the findings of one or the other of the current reports.

In your letter of July 12, 1988, Mr. Chairman, you present three options as to what method would best achieve the goal mentioned above. They are:

1. A Senate resolution to the U. S. Claims Court;

2. A concurrent resolution to establish a congressionally appointed commission to make the study;

3. Legislation to establish another presidentially-appointed commission to conduct the study.

Of the three methods, I would select method #2 listed above.

FIRST: A concurrent resolution to establish a congressionally appointed commission would be the fastest way to establish an investigating commission. Methods 1 and 3 could take forever. Enough time has passed. Ninety-five (95) years. The resolution of this problem is already long overdue.

SECOND: The composition of the commission from both houses of the Congress and from both political parties would offer the best opportunity for a thorough and unbiased study. I would recommend that the commission be broadened by the appointment of experts in the field, in addition to members selected from the House and Senate. In either case an advisory group of experts should also be appointed as you have recommended.

THIRD: This study commission would also have members who not only will make recommendations to both houses of Congress but who also will participate in the final decisions of the Congress of these United States.

FOURTH: I believe that the question belongs in the Legislative branch of government for resolution. It must be approached in the broad scope that only the legislative body can employ. It is not only a legal question whose answer must necessarily follow restrictive restraints, but also in the broadest sense deals with the deepest and most profound question of what we as a nation stand for; our national morality and conscience is involved; our national and personal sense of honor and decency are at the fore. Only the Congress in the end can define what we as Americans stand for as a people. Do we as a nation practice what we preach.

My second choice would be the Presidentially-appointed Commission. With the members being experts in fields related to the issue at hand. Again, such a Commission to be bi-partisan in composition.

Thank you, Mr. Chairman, for the opportunity to testify. Thank you also for your long standing diligence and patience on all matters that have come before you involving the Native Hawaiian. I am truly grateful for the caring concern that you have steadfastly demonstrated through the years you have held your high office. I extend to you on my behalf and on the behalf of Native Hawaiians through out Hawaii Nei our warmest Aloha.

If you have any questions, I would be happy to answer them if I can.

(5)

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25 August 1988

TO: Senator Daniel K. Inouye, Chair, and
U.S. Senate Select Committee on Indian Affairs

FROM: Kekuni Blaisdell, M.D. Kekuni
Acting Interim Director
Center for Hawaiian Studies

SUBJECT: Testimony on Reparations

For presentation at U.S. Senate Select Committee Hearing on Reparations, 26 August 1988, Keoni Auditorium, East-West Center.

I am Kekuni Blaisdell, Acting Interim Director of the Center for Hawaiian Studies, speaking on behalf of our Center, the UH-Mānoa and the UH-Statewide Hawaiian Studies Councils.

Any discussion of reparations to Native Hawaiians from the U.S. government that in any way implies final restitution or settlement of all claims for the redress of past wrongs through the payment of monies or land is not only premature at this time, but dangerous, and thus, unacceptable.

The complicity of the U.S. government in the 1893 armed invasion and overthrow of the legitimate government of the Hawaiian people and the consequent usurpation and mismanagement of our lands are injustices which no award of money or property can rectify.

The separation of the Hawaiian people from the land which had always sustained us, has resulted in the progressive deterioration of our physical, psychological and spiritual condition. This process can only be reversed through the restoration to us not just of our lands, but of our rights to the free exercise of our religion, culture and language, which are inextricably tied to that land. These rights derive from the Hawaiian peoples' entitlement to self-determination, and it is self-determination that should be the topic of this Senate committee hearing.

Absent the recognition of our entitlement to self-determination, reparations are no more than an attempt to buy what ought never to be for sale: control by Hawaiians over our own future.

This central issue of concern for Native Hawaiians, the issue of self-determination, entails the creation of a government of our own, designed and established by the Hawaiian people, separate from and recognized by the U.S. government and the State of Hawai'i, on a nation-to-nation, government-to-government basis.

Recognition of Hawaiian nationhood by the U.S. and the State of Hawai'i would constitute acknowledgment that Native Hawaiians have the same powers, access and benefits that the U.S. government currently recognizes in 308 American Indian, Eskimo, and Aleut nations. Any such arrangement should also make clear that Native Hawaiians are not Indians, but that our claim to sovereignty is as strong as that of any Native American people.

The Hawaiian Kingdom, prior to 1893, had been a separate nation recognized as such by the great powers, including the U.S., for over 50 years until it was toppled by armed U.S. naval forces. Accordingly, a public apology by the U.S. government for its role in the armed overthrow of the Hawaiian monarchy, and formal recognition by the U.S. government and the State of Hawai'i of the sovereignty of the Hawaiian people are essential.

The form that the government of, by, and for the Hawaiian people will take must be decided by the Hawaiian people, not by non-Hawaiians or by any existing federal or state agency. Meanwhile, no other already-established agency or body has the right to act on behalf of the Hawaiian people.

OHĀ is and should remain a state agency which sets State of Hawai'i policy toward the Native Hawaiian people. OHĀ should not be "federalized" or otherwise reconstituted to "receive reparations and restitution."

Reparations are not owed to the state, but rather to the Native people. Thus, at the appropriate time the people, not the state, should decide what constitutes suitable forms of reparations.

Since 1972, U.S. federal law has called for self-determination for all Native American peoples. While implementation of this policy on behalf of American Indians has proceeded, we Hawaiians have been pointedly ignored and, indeed, opposed in our efforts to seek justice. The suggested options of redress through the U.S. Claims Court, a Congressional Study Commission, or another Presidential Study Commission are options that will undermine rather than advance the federal policy of granting self-determination to Native peoples.

The movement for the recognition of the self-determination of indigenous peoples has gained momentum at international forums, such as the United Nations, and at regional forums, such as the South Pacific Forum. The United States, in keeping with this worldwide effort, should facilitate the assertion of self-determination by the Native peoples within its territorial control.

The process of formally recognizing Native Hawaiian self-determination and the right to a Native Hawaiian government must be initiated by the Congress now, without awaiting or deferring to any future Presidential or Congressional Commissions.

It is the responsibility of each member of Hawai'i's Congressional delegation to offer every assistance in the effort to pass appropriate enabling legislation for self-determination now.

It is also the responsibility of OHĀ, the Department of Hawaiian Home Lands, other relevant state agencies, appropriate federal agencies, Alu Like and other private Hawaiian and non-Hawaiian organizations to support and organize support for this important movement which moral justice and international law have demanded for more than 95 years.

We cannot and should not wait any longer. The time is now for the case of Native Hawaiian nationhood to be officially recognized and implemented.

Accordingly, we recommend that the Senate Select Committee on Indian Affairs designate staff and other resource persons and provide funds to meet regularly with representatives of the Native Hawaiian community, to include Ka Lāhui Hawai'i, the Center for Hawaiian Studies, E Ola Mau, Protect Kaho'olawe 'Ohana, Na 'Ōiwi O Hawai'i, Nā 'Ohana O Hawai'i and others, to begin drafting federal legislation to address these concerns.

6

Native Hawaiian Reparations

Testimony to the Senate Select Committee on Indian Affairs
By Naleen N. Andrade, M.D.
Vice-President of E Ola Mau
August 26, 1988

Aloha Senator Inouye, members, and staff of the Select Committee on Indian Affairs. I am grateful for this opportunity to present testimony on Hawaiian Reparations on behalf of E Ola Mau, an organization of Native Hawaiian health professionals whose primary goal is to address the severe health needs of our native people.

E Ola Mau's analysis of Native Hawaiian health reveals that Hawaiians exhibit poor health because of a lack of lokahi, the harmony of the self (body, mind and spirit) with others and all of nature. This lack of lokahi has resulted in four core conditions among Native Hawaiians:

(1) The Loss of Self. Modern-day Hawaiians can be said to suffer from a lack of faith in the Hawaiian self. We have allowed others to re-define us for their own convience.

(2) The breakdown of the 'Ohana System. Hawaiians may also be said to have lost the understanding and use of the 'ohana belief system. The 'ohana or family was the basic unit of social interaction in traditional Hawaiian society in which members of the 'ohana contributed their resources to address their needs -- social, economic, religious, psychological and so forth. In a very real sense, without 'ohana, Hawaiians lack a home, a place of comfort, safety, consistency and nurturing.

(3) The Loss of an Orienting Force. Traditional Hawaiians relied on the Kapu system as the orienting force which established pono, a concept brilliantly presented by Dr. Lilikala Kāme'eleihiwa, Professor at our Hawaiian Studies Center. Pono is the Native Hawaiian belief that the law of the universe is to be in perfect balance. And,

(4) The Loss of 'Aina or land literally means that which feeds or nurtures. The loss of 'aina refers to the real and symbolic 'aina which ties the 'ohana together and feeds the body, mind and spirit. Recent efforts of Hawaiians trying to re-claim their lands have been well publcized, and not very successful. Symbolic 'aina refers to a sense of belonging to ones ancestral beliefs and 'aumakua (or ancestral gods) which nurtures one to practice lokahi, and ultimately achieve pono.

These four conditions exists largely because Hawaiians in losing their sovereignty have lost the right, and means, by which a people govern themselves and establish the laws that define, Who they are? and How they as a people will behave in their homeland? From a once great nation, Hawaiians have been reduced to a remnant best known as the sellers of leis and aloha.

No amount of money can replace this loss. Reparations alone can not change the core conditions outlined or the prevalent perception of our native people.

E Ola Mau believes that the restoration of lokahi and pono among our native people must come from Hawaiians themselves, we must learn again to be a sovereign people. We are not advocating giving up our American citizenship, but rather to receive the same respect and rights as our Indian, Alaskan and Aleut brothers and sisters. America is great enough of a nation to ensure this kind of freedom.

In Hawai'i their are movements, such as Ka Lahui Hawai'i, that are attempting to work within the framework of the American Constitution in order to restore our Hawaiian nation. We ask that the Select Committee on Indian Affairs work with Ka Lahui Hawai'i and other interested Hawaiian organizations to begin the healing that goes beyond the Band-Aid approach that reparations suggests, and begins the deeper healing needed to restore a native people.

(7)

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To: Senator Daniel K. Inouye and Senate Select Committee on Indian Affairs

From: Mililani B. Trask, Kia'aina, Ka Lahui Hawai'i

Re: Reparations - 26, August 1988, Keoni Auditorium, East West Center

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On behalf of the Legislature of Ka Lahui Hawai'i, pursuant to Section 6, Article VI of the Constitution of Ka Lahui Hawai'i, adopted March, 1987, I am pleased to present this testimony to the Senate Select Committee on Indian Affairs. See Exhibit "A".

I. Response to options proposed by Senate Select Committee for proceeding with Reparations for native Hawaiians.

A.) Court of Claims

It is the position of Ka Lahui Hawai'i that no action should be instituted in the U.S. Claims Court for the following reasons:

(1) There is very little by way of precedence for the Court to follow given the subject matter and nature of the claims.

(2) Because the U.S. has not recognized Ka Lahui Hawai'i and currently has no administrative or other procedure to provide for recognition of a native governing entity, which is separate from the State and Federal governments, there is no one to bring the claims. Any attempt by the U.S. or State to afford standing to their own agencies or instrumentalities would be contrary to self-governance and self-determination for native Hawaiian people.

(3) There are hundreds and possibly thousands of individuals whose genealogies support their relationship to the last

ruling Monarchs of Hawai'i. Consequently, any action brought to the U.S. Claims Court would result in the proceeding being a probate matter for royal heirs.

This option should be avoided at all cost.

B. Congressional or Presidential Commission:

The position of Ka Lahui Hawai'i regarding these two options is that it is premature to make a determination at this time. A Presidential Commission may be the preferred mode, depending on who the President is and what his position is on the matter.

Regardless of the above, it is doubtful that either of these options will resolve the problems which face the native people. The question is not what happened in 1893, but what needs to be done in 1988 to address the demands of the native Hawaiians for self-determination.

II. Position of Ka Lahui Hawai'i Re: Reparations:

In 1893, the Sovereign Queen of the Kingdom of Hawai'i ceded authority of her Kingdom to the United States. As a consequence the United States, by terms of international law, accepted the responsibility to provide for the native Hawaiian people and to protect their property rights. Subsequently, the United States created two native trusts, the Hawaiian Home Trust of 1920 and the Ceded Land Trust of 1959, for the "betterment" of conditions of native Hawaiians.

The current Federal policy which governs the relationship of the U.S. to its native people provides for recognition of the right of native people to be self-governing, to control and exercise jurisdiction of their lands, to administer tribal courts, and to receive direct federal grants for governance, for health, education and other governmental services. See Exhibit "B".

Native Hawaiians are excluded from these policies and from all administrative procedures (Department of Interior, B.I.A., and the Federal Acknowledgement procedures) which would provide them with the inherent right to be self-governing. Despite clear and convincing evidence of extensive breach of trust on the part of the State and the United States, native Hawaiians are denied access to the U.S. District Court for resolution of claims relating to mismanagement of their Ceded Lands. (See the Report of the Federal State Task Force on Hawaiian Homes Commission Act, August 1983.)

The July 6, 1988 Memo to the Senate Select Committee from the American Law Division indicating that native Hawaiians "are not organized in governmental units", is incorrect. In August, 1987, Ka Lahui Hawai'i, as a governing body, met with the Senate Select Committee Chair and staff to transmit the fundamental documents of governance of Ka Lahui Hawai'i to the United States government, and to present to them our national position on Reparations. Ka Lahui Hawai'i has received an A.N.A. grant for self-governance and is currently enrolling native people into the nation. To date neither the State nor Federal governments have created or maintained a roster of native Hawaiians, this responsibility has fallen to Ka Lahui Hawai'i.

Attached hereto as Exhibit "C" is the Resolution of the Legislature of Ka Lahui Hawai'i regarding Reparations. In the interest of expediency this testimony hereby incorporates by reference the Position Statement of Ka Lahui Hawai'i, Re: Reparations, transmitted to Senator Daniel K. Inouye and Pat Zell in August, 1987.

Two memos prepared by Mr. Mahsetky and Mr. Taylor, staff legal counsel, for the Senate Select Committee dated August 13th and 21st, 1987, respectively contained numerous incorrect representations relating to the current situation in Hawai'i. Response memoranda were sent by Ka Lahui Hawai'i, dated September 23, 1987 and October 14, 1987 to the Senate Select Committee. Exhibits "D" and "E", attached hereto. No response has been received from the Senate Select Committee to date.

The time has come for inclusion of native Hawaiians and their governing entity in the existing Federal and State structures, and for federal recognition of Ka Lahui Hawai'i.

At present, Ka Lahui Hawai'i is in receipt of an A.N.A. grant which is being used to conduct workshops and complete an enrollment of native Hawaiians and Hawaiians. The Constitution of Ka Lahui Hawai'i is a democratic document which provides for great flexibility. Historical continuity is maintained by virtue of the provisions of Article III which provides for inclusion of the traditional chiefs or Ali'i of our people who are charged with the responsibility of advising the unicameral legislature on matters relating to protocol and culture.

We do not need an Indian Reorganization Act, an Indian Self-determination Act, a Federal B.I.A. or a federalized version of OHA. These basic concerns are met by Ka Lahui Hawai'i which is a native initiative for self-governance.

The Senate Select Committee on Indian Affairs would do native Hawaiians a great disservice by forcing our people into the Indian model because the Indian models are based on their unique legal and historical relationship with the U.S.. The Indian model is applicable only in the broadest sense.

We are greatly concerned with efforts being undertaken in Hawai'i and in Washington to federalize the Office of Hawaiian Affairs. This movement was generated as a result of the Taylor and Mahsetky memos of August, 1987. For this reason, we have attached the Response of Ka Lahui Hawai'i to this testimony. We request that a copy of this document and its exhibits be distributed to all of the members of the Senate Select Committee on Indian Affairs.

If Federal Reparations is to mean anything to native Hawaiians and Hawaiians it must be more than a report pointing the finger of blame over the historical events of 1893.

There is no legitimate reason why the United States of America should exclude Hawaiian aboriginals from its policies affording the native Americans the right to be self-governing.

The Senate Select Committee should sponsor Reparations Legislation as per the Resolution of the Legislature of Ka Lahui Hawai'i, Fourth Session, Exhibit "C" attached hereto. In addition, Ka Lahui Hawai'i's Constitution provides for protection of native rights to fish, gather, worship and undertake traditional and cultural practices. These rights should be recognized and provided for on federal reserves throughout the Hawaiian Archipelago. At present, the U.S. is contemplating drafting federal rules governing fishing in the Pacific Basin. Native Hawaiian rights should be addressed and provided for therein.

For several years the State, U.S. Navy and U.S. District Court have recognized the Protect Kaho'olawe Ohana (PKO) as the native cultural guardians of Kaho'olawe island. Ka Lahui Hawai'i's legislature has two vacant seats allocated for Kaho'olawe representatives. These seats cannot be filled until the P.K.O. are allowed residences on the island. Kaho'olawe island is entirely ceded land. Ka Lahui Hawai'i believes that the entire island of Kaho'olawe should be included in the ceded lands which are segregated and awarded to Ka Lahui Hawai'i.

In 1987, Ka Lahui Hawai'i requested the Senate Select Committee on Indian Affairs to propose legislation which would allow native Hawaiians and Hawaiians the right to bring action in the Federal District Court against the United States and the State of Hawaii for Breach of Trust. We were led to believe that such legislation would be drafted. In March, 1988 we learned that Senator Inouye would not introduce legislation at the Governor's request. (See Exhibit "F".) OHA and the Governor have met in closed sessions since January, 1987, in violation of the State sunshine laws, to discuss division of the ceded Lands Trust and assets. After five years of lobbying for a State Right to Sue Bill, Governor Waihee and the Office of Hawaiian Affairs were successful in obtaining passage of a Bill which allows the native people to sue the State for breach of trust but which prevents the courts from awarding successful plaintiffs either awards of land or monetary damages necessary to provide infrastructure on their lands. The relevant provision of the bill provides:

> " - Scope of relief. (a) In an action under this chapter the court may only award land or monetary damages to restore the trust which has been depleted as a result of any breach of trust duty and no award shall be made directly to or for the individual benefit of any particular person not charged by law with the administration of the trust property; provided that actual damages may be awarded to a successful plaintiff."

Consequently, under the state statute, if a native beneficiary sues the state agencies responsible for native trusts (OHA and DHHL for breach of trust and wins, all lands and monies received (other than out-of-packet losses) will be paid to the very state agencies who have been found to be in breach of trust.

On April 5, 1988, Ka Lahui Hawai'i sent to the Senate Select Committee on Indian Affairs a seven page document citing the Federal State Task Force on Hawaiian Home Lands Report of August, 1983 documenting the need for federal legislation on this matter. To date we have not received any response.

By law the Office of Hawaiian Affairs has a fiduciary obligation to act exclusively in the interest of native Hawaiians (50% bloods) in its management of the Ceded Land Trust. In its eight years of existence, OHA has failed to meet the needs of native Hawaiians for housing, education, medical services and economic self-sufficiency. Despite this fact, OHA has announced its intention to hold a plebiscite on the November election to change the definition of the term 'native Hawaiian' in order to allow OHA to utilize Ceded Land assets to benefit persons who are not currently defined as native Hawaiians. This will diminish the trust assets available to native Hawaiians of 50% blood. Despite the fact that the Attorney General of the State of Hawaii has notified OHA of the illegality of their actions, OHA has determined that it will proceed with the plebiscite. These actions in and of themselves constitute a breach of OHA's fiduciary obligation to protect trust assets and utilize ceded trust revenues exclusively for the native Hawaiian. We hereby request that the Senate Select Committee on Indian Affairs initiate a formal request to the United States Department of Justice for an investigation of this matter and to take necessary legal action to enjoin the Office of Hawaiian Affairs from taking any action which would diminish the legal entitlements of native Hawaiians as defined in the Hawaiian Homes Commission Act of 1920 as amended or alter the definition of the term native Hawaiian as established in the Admission Act Section 5(f) of the State of Hawaii.

Therefore, we recommend that the Senate Select Committee on Indian Affairs designate staff and other resource persons and appropriate funds for them to meet regularly with representatives of Ka Lahui Hawai'i and the Hawaiian community to begin working on federal legislation which will address these concerns. Your prompt response is greatly appreciated.

Sincerely,

MILILANI B. TRASK
Kia'aina,
Ka Lahui Hawai'i

CONSTITUTION OF KA LAHUI HAWAI'I

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CONSTITUTION OF KA LAHUI HAWAI'I

UA MAU KE EA O KA AINA I KA PONO

God hath made of all nations of people to dwell on the earth, in unity, peace, and righteousness. God has also bestowed certain rights alike on all people and all alaka'i of all lands.

These are some of the rights which he has given alike to every person and every alaka'i, life, limb, liberty, freedom from oppression, the earnings of his hands and the productions of his mind.

God has given the people the wisdom and knowledge to establish government; and to rule for the purpose of peace; and in making laws for the Nation it is not proper to enact laws for the protection of the alaka'i only, without protection for their people; nor is it proper to enact laws to enrich the alaka'i only, without enriching the people also, and hereafter there shall be no laws enacted which are at variance with this principle, nor shall there be laws enacted which would result in the people of this Nation being left homeless or laws enacted which would result in the suffering of the children of this Nation.

PREAMBLE

We, the Native Hawaiians, and our descendants are the traditional rightful, legal occupants and users of the land, water, sea, mineral, and all other resources as farmers, fishermen, hunters, manufacturers, miners, tradesmen, professionals, and residents, who have nurtured and permeated the Hawaiian Archipelago;.

We, the Native Hawaiians and our descendants have inhabited and occupied this archipelago and exercised our traditional, religious and access rights since time immemorial to sustain and maintain our culture and primordial interests under all of the governments exercising jurisdiction over the Hawaiian Archipelago.

Our sacred queen, Keopuolani, at her deathbed on September 15, 1823 expressed to Kamehameha II, "Take care these lands which you have received from your father (Kamehameha I). Exercise a tender care over the people;"

Kamehameha II reaffirmed the Hawaiian principle of governance since time immemorial; "Ua Mau Ke Ea O Ka Aina I Ka Pono, The life of the land is perpetuated in righteousness."

The Nation of Hawaii and Kamehameha III on August 19, 1850 entered into a treaty of friendship, commerce and navigation with the United States of America and other Nations, thereby, declaring perpetual peace and amity between these Nations;

The United States of America has recognized Native Hawaiians and their lands in the Hawaiian Homes Commission Act, 1920 (Act of July 9, 1921, 42 Stat. 108, Chapter 42, as amended; Act of March 18, 1959, Pub.L. 86-3, 73 Stat, Section 4) and the State of Hawaii Admission Act Section 5(f) land trust (Act of March 19, 1959, Pub.L. 86-3, 73 Stat 4, Section 5(f)) thereby creating for the betterment of the conditions of Native Hawaiians, two public land trusts of which the Native Hawaiians and their heirs are the beneficiaries.

NOW, THEREFORE, We, the Native Hawaiians, here adopt this Constitution for Ka Lahui Hawai'i in exercise of our right of self-determination, to build a Nation upon established traditions, to form an orderly and representative government, to provide for citizenship, to promote the welfare of our citizens and children, to exercise certain rights of home rule, to secure the blessings of freedom and liberty, to develop our trust resources, to conserve our trust assets, to dedicate ourselves and our Nation to disarmament, peace, and absolute faith in equity and justice.

ARTICLE I

BILL OF RIGHTS

SECTION 1. FREEDOM OF RELIGION, SPEECH, PRESS, RIGHTS OF ASSEMBLY, AND PETITION:

There shall be separation of Church and Government, but there shall be no separation of Culture and Government and no law shall be enacted respecting the establishment of religion or prohibiting the free exercise thereof; and no person shall discourage or suppress the practice of traditional Hawaiian religion or beliefs; No law shall be enacted abridging the freedom of speech or of the press, or the right of people peaceable to assemble, and to petition the Government for a redress of grievances.

SECTION 2. NO DEPRIVATION OF LIFE, LIBERTY OR PROPERTY WITHOUT DUE PROCESS:

No person shall be deprived of life, liberty, or property without due process of law, nor shall private property be taken for public use without just compensation.

SECTION 3. PROTECTIVE POLICY:

The Government of Ka Lahui Hawai'i, its constituent agencies, accept as a sacred trust the obligation to promote to the utmost, the well-being of the inhabitants of this Nation, and to this end its policy is:

(A) To ensure, with due respect for the culture of the people concerned, their political, economic, social, and educational advancement, their just treatment, and their protection against abuses;

(B) To develop self-government, to take due account of the political aspirations of the people, and to assist them in the progressive development of their free political institutions, according to the particular circumstances of each district and its people and their best interest;

(C) To further internal peace and security;

(D) To promote constructive measures of development, research, and cooperation with one another and, when and where appropriate, with specialized agencies and bodies of other Nations and States with a view toward realization of the social, economic, and scientific purposes set forth in this Section;

(E) To protect and increase the land base of the Nation and;

(F) To protect Native Hawaiians against alienation of their traditional lands and the destruction of the Native Hawaiian way of life and language, contrary to their best interest, with especial emphasis being placed upon pure Hawaiians. Such legislation as may be necessary shall be enacted to protect the lands, customs, culture, and traditional Hawaiian family organization. Business enterprises by Native Hawaiians shall be encouraged. No change in law respecting the alienation or transfer of trust lands or any interest therein, shall be lawful, nor change in the traditional rights of Hawaiians.

SECTION 4. DIGNITY OF THE INDIVIDUAL:

The dignity of the individual shall be respected and every person is entitled to protection of the law against malicious and unjustifiable public attacks on the name, reputation, or honor of himself or his family.

SECTION 5. PROTECTION AGAINST UNREASONABLE SEARCHES AND SEIZURES:

The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no warrant shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized. Evidence obtained in violation of this Section shall not be admitted in any court.

SECTION 6. RIGHTS OF AN ACCUSED:

No person shall be subject for the same offense to be twice put in jeopardy of life or liberty nor shall he be compelled in any criminal case to be witness against himself; and the failure of the accused to testify shall not be commented upon nor taken against him. In all criminal prosecutions, the accused shall have the right to a speedy and public trial, to be informed of the nature and the cause of the accusation and to have a copy thereof; to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense. Every person is presumed innocent until pronounced guilty by law, and no act of severity which is not reasonably necessary to secure the arrest of an accused person shall be permitted. All persons shall be bailable by sufficient sureties except where the judicial authorities shall determine that the presumption is great that an infamous crime, which term shall include murder, rape, and violent crimes against children has been committed and that the granting of bail would constitute a danger to the community. Bail shall be set by such judicial authorities. Excessive bail shall not be required, nor excessive fines imposed nor cruel or unusual punishments inflected.

SECTION 7. HABEAS CORPUS:

The writ of habeas corpus shall be granted without delay and free of costs. The privilege of the writ of habeas corpus shall not be suspended except by the Kia 'aina and then only when the public safety requires it in cases of war, rebellion, insurrection or invasion.

SECTION 8. QUARTERING OF MILITIA:

No soldier or member of the militia shall, in time of peace, be quartered upon Native Hawaiian trust lands or, in any house without the consent of the owner or the lawful occupant, nor in time of war, except in a manner prescribed by law.

SECTION 9. IMPRISONMENT FOR DEBT:

There shall be no imprisonment for debt except in cases of fraud.

SECTION 10. SLAVERY PROHIBITED:

Neither slavery, nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist in the Nation of Hawaii.

SECTION 11. TREASON:

Any person who advocates, or who aids or belongs to any party, organization, or association which advocates the overthrow by force or violence of Ka Lahui Hawai'i shall not be qualified to hold office or trust or profit under Ka Lahui Hawai'i.

SECTION 12. SUBVERSIVES INELIGIBLE TO HOLD OFFICE:

Any person who advocates, or who aids or belongs to any party, organization, or association which advocates the overthrow by force or violence of Ka Lahui Hawai'i shall not be qualified to hold office of trust or profit under Ka Lahui Hawai'i.

SECTION 13. RETROACTIVE LAWS AND BILLS OF ATTAINDER:

No bill of attainder, ex post facto law, nor any law impairing the obligation of contracts shall be passed.

SECTION 14. HEALTH, SAFETY, MORALS, AND GENERAL WELFARE:

Laws shall be enacted for the protection of the health, safety, morals,f and general welfare, of the people of Ka Lahui Hawai'i.

SECTION 15. EDUCATION:

The Government shall operate a system of free and non-sectarian public education. The government will also encourage qualified persons and Kupuna of good character to acquire further education, locally and abroad, in cultural, general and technical fields, to aid in the development of the Nation.

SECTION 16. UNSPECIFIED RIGHTS AND PRIVILEGES AND IMMUNITIES:

The enumeration of certain rights in this Constitution shall not be construed to impair or deny other rights retained by the people. No law shall be made or enforced which shall abridge the privileges or immunities of the citizens of the Nation of Hawaii.

SECTION 17. CUSTOMARY AND TRADITIONAL RIGHTS: KANAWAI: LAW OF THE LAND: THE JUST AND EQUITABLE DIVISION OF WATER IS THE LAW OF THE LAND AND LAW OF AKUA. THE RIGHT OF THAT LAW IS LIFE: THAT THE LAND SHALL LIVE AND PRODUCE LIFE IN HARMONY WITH THE ELEMENTS, NATURE AND AKUA.

(A) INSTREAM USES. The customary and traditional rights possessed by Native Hawaiians and their descendants, to harvest, cultivate and propagate traditional food staples including, but not limited to, hihiwai, opae, oopu, ho'io, and limu from the streams and their ecosystem, and watercourses of the archipelago, for subsistence, cultural and religious purposes, shall not be abridged.

(B) BUILDING MATERIALS, WATER, MINERALS ETC.; LANDLORD'S TITLES SUBJECT TO TENANTS' USE. Where landlords have obtained, or may hereafter obtain, allodial titles to their lands, the Native Hawaiians and their descendants shall not be deprived of their right to take firewood, house-timber, stones, aho cord, thatch, or ki leaf, or other medicinal, and native plants, and minerals from the land on which they live, for their own use. The Native Hawaiians and their descendants shall also have the right to drinking water, and running water, and roads shall be free to all who are citizens of the Nation on all lands of the archipelago.

(C) FISHING - KONOHIKI RIGHTS. The traditional and customary rights of Native Hawaiians and their descendants to fish and harvest in the waters of the archipelago and to cultivate the land and its natural resources for personal subsistence and religious purposes shall not be abridged.

(D) RIGHTS OF ACCESS. Native Hawaiians and their descendants shall be allowed free access to the mountains, and caves, and the sea, and sites of religious and cultural importance for personal, subsistence and religious purposes.

(E) KULEANA, TARO, AND OTHER NATIVE TRUST LANDS. Lands used by Native Hawaiians and their descendants for the cultivation of traditional food staples shall be entitled to water in sufficient quantities to maintain customary and traditional agricultural practices including, but not limited to, the cultivation of kalo, luau, ki leaf, aho cord, and medicinal plants for subsistence, cultural and religious purposes.

(F) LAW OF THE SPLINTERED PADDLE. Native Hawaiians and their descendants shall be free to traverse the archipelago and shall be entitled to safe passage upon the roads and highways of the archipelago.

(G) BIRTH: BURIAL RIGHTS. In harmony with nature and the Akua the people are born from the land. The life of the land and its people is maintained in righteousness. The right of native Hawaiians and their descendants to be buried on the land of their ancestry shall not be denied. The Nation shall provide and designate lands for this purpose and shall acknowledge the responsibility of the decedent's ohana to care for and maintain the burial sites.

(H) The Nation shall protect and provide for the above rights in the exercise of its powers and duties and in the promulgation of rules and regulations in administering its lands and navigable waters.

(I) DEFINITION: Subsistence as used herein, means use for personal consumption or a use which provides a basis for the economic support of the ahupua'a tenant or his immediate family.

ARTICLE II

CITIZENSHIP

SECTION 1. ENROLLMENT:

Any Native Hawaiian and Hawaiian can be enrolled as a citizen of Ka Lahui Hawai'i.

SECTION 2. RESIDENCE:

Any enrolled Native Hawaiian and Hawaiian shall have a post office and/or a residence address to which official correspondence and contact with such enrolled citizen can be made. A temporary forwarding address may be registered in addition to the official address for cause.

SECTION 3. CITIZENSHIP RIGHTS AND DUTIES:

The full rights, privileges and duties as prescribed by the Constitution of the Nation shall extend to each citizen of the Nation, provided that Native Hawaiians have the exclusive right to determine any and all legislation and/or benefits pertaining to Native Hawaiian Land Trusts.

(A) VOTING QUALIFICATIONS: Any citizen residing in the Nation for one year, and age 18 years and older, shall have the right to vote.

(B) VOTING REGISTRATION: The Legislature shall enact laws to ensure that Native Hawaiians registering to vote shall be not less than 50% blood quantum.

SECTION 4. HONORARY CITIZENSHIP:

There shall be honorary citizens of the Nation who are of non-native blood. Such citizens shall not be entitled to the rights and privileges afforded the Native Hawaiian and Hawaiian citizens of the Nation. Procedures for conferring citizenship shall be enacted by the Legislature.

ARTICLES III

ALI'I NUI

SECTION 1.

The Ali'i Nui shall symbolize Ka Lahui Hawai'i, shall represent the Nation and advise the Nation in all matters requiring protocol and shall consult with the Ali'i Council and the Advisory Council in matters of cultural tradition. The Ali'i Nui shall hold no other office under this Constitution, nor have the power to veto laws enacted by the Legislature.

SECTION 2.

The Ali'i Nui of the Nation shall be Kalokuokamaile.

SECTION 3.

The Ali'i Nui shall be the senior Ali'i. The Ali'i Nui shall appoint her successor from amongst the Ali'i Council or her issue. Should there be no appointment, then the decision shall rest with the Ali'i Council.

SECTION 4.

The Ali'i Nui may designate a representative from amongst the Ali'i Council to speak in her behalf, which representative shall be designated Talking Chief.

SECTION 5.

The Ali'i Nui shall appoint and assemble an Ali'i Council comprised of representatives of the various chiefly Ali'i clans from each island and whose members must be Native Hawaiian, irrespective of lineage, which Council shall advise her regarding cultural and social traditions and protocol.

SECTION 6.

The Ali'i Nui shall appoint and assemble an Advisory Council composed of citizens who are professional people, Kupuna and Makaainana, who shall advise the Ali'i Nui regarding cultural and social traditions and protocol.

SECTION 7.

In the event a deadlock between the Ali'i Council and the Advisory Council occurs, the decision of the Ali'i Nui shall prevail.

ARTICLE IV

LEGISLATIVE POWER

SECTION 1. LEGISLATIVE AUTHORITY: HOW VESTED.

The Legislative authority of Ka Lahui Hawai'i shall be vested in a Legislature consisting of one chamber. The people reserve for themselves, however, the power to propose laws, and amendments to the Constitution, and to enact or reject the same at the polls, independent of the Legislature, and also reserve power at their option to approve or reject at the polls any act, item, section, or part of any act passed by the Legislature.

SECTION 2. FIRST POWER RESERVED: INITIATIVE.

(A) The people may enact laws and Constitutional amendments independent of the Legislature. The power of the people to enact laws shall be by petition pursuant to the following rules:

1. Petition to enact a law: The laws to be enacted shall be set forth at length in clear language which shall include a statement concerning the purpose of the law. The petition shall be signed by 7 percent of the registered voters of the Nation. The registered voters who sign the petition must come from two-fifths of the districts of the Nation. The petition shall be filed with the Secretary of State at least 4 months before the next general election. The same law, in form or substance, shall not be submitted to the people by initiative petition oftener than once every two years. If conflicting measures are submitted to the people at the same election, the measure receiving the highest number of affirmative votes shall become law as to all conflicting provisions.

2. Petition to enact a Constitutional Amendment. The law to be enacted shall be set forth at length in clear language which shall include a statement concerning the purpose of the law. The petition shall be signed by 10 percent of the registered voters of the Nation. The registered voters who sign the petition must come from two-fifths of the districts of the Nation. The petition shall be filed with the Secretary of State at least 4 months before the next general election. The same law, in form or substance, shall not be submitted to the people by initiative petition oftener than once every 3 years. If conflicting measures are submitted to the people at the same election, the measure receiving the highest number of affirmative votes shall become law as to all conflicting provisions.

(B) The constitutional limitations relating to the scope and subject matter of statutes enacted by the Legislature shall apply to those enacted by initiative.

SECTION 3. SECOND POWER RESERVED: REFERENDUM.

(A) The people may revoke, in whole or in part, any act of the Legislature. The people may not revoke any law which appropriates money to the National Government or any institution in existence at the time of passage. Nor shall the people revoke emergency acts for the immediate preservation of public peace, health and safety. The power of the people to revoke legislation shall be by petition pursuant to the following rules:

1. The petition shall be signed by 5 percent of the registered voters of the Nation. The registered voters who sign the petition shall come from two-fifths of the districts of the Nation. The petition shall be filed with the Secretary of State not less than 90 days after the adjournment of the Legislature which enacted the measure. The petition shall set out in clear language the title of the act against which the petition is invoked or, where applicable, the specific sections or portions of the act against which the referendum is invoked.

2. When referendum is invoked as provided in Section 3(A)1 above, the Secretary of State shall refer the matter to the electors of the Nation for approval or rejection at the first general election held not less than 30 days after the petition is filed with the Secretary.

SECTION 4. INITIATIVE AND REFERENDUM: BASIS OF VOTES; VETO; ELECTION RETURNS; CONSTITUTIONAL AMENDMENTS; NON-PARTISAN BALLOT.

1. The veto power of the Kia'aina shall not extend to measures initiated by or referred to the people.

2. In determining the percentage of registered voters needed to sign a petition in Section 2 and 3 above, the basis on which the number of signatures shall be computed is the whole of votes cast for the Kia'aina in the preceding election.

3. A measure will become law, or part of the Constitution as the case may be, if it receives the majority of the votes cast and it receives not less than 35 percent of the total votes cast at one election to which it was submitted.

4. The vote on initiative and referendum measures shall be returned and canvassed in the manner prescribed by law. Measures enacted by initiative and referendum shall become law, or cease to be law, as the case may be. The Kia'aina shall make a declaration on the voting not less than 10 days after the official canvas of the votes has concluded.

5. The method of adopting amendments to the Constitution provided in this Article shall be supplemental to that prescribed in Article VII Section 3 of the Constitution entitled "Amendments".

6. The provisions regarding initiative and referendum shall be self-executing, but the Legislature may enact provisions to facilitate their operation.

7. When a proposition is submitted, it shall be submitted in a non-partisan manner and there shall be no marking on the ballot indicating its endorsement or censure by a political party or organization.

8. Only the title or proper descriptive words of measures shall be printed on the ballot and when two or more measures have the same title they shall be numbered consecutively in the order of filing with the Secretary of State and the number shall be followed by the name of the first petitioner on the corresponding petition.

SECTION 5. RECALL.

An elected officer or Judge may be recalled by petition. Upon receipt by the Lieutenant Governor, of a petition signed by 10 percent of the eligible voters of the Nation, it shall be the duty of the Lieutenant Governor to call a special election upon the question of recall. Such special election shall be called and held within a period of 60 days after receipt of a petition. No officer or Judge may be recalled except by a majority vote in an election in which at least 35 percent of the eligible voters of the Nation voted.

SECTION 6. LEGISLATIVE DISTRICTS: APPORTIONMENT; REDISTRICTING: WHEN REQUIRED.

1. DISTRICT IDENTIFIED: The Legislative districts shall be the islands of Hawaii, Maui, Molokai, Lanai, Oahu, Niihau, Kauai, and Kahoolawe.

2. The Legislative districts shall have the following number of Legislators: Hawaii Island, 8; Maui Island, 8; Molokai Island, 8; Lanai Island, 2; Oahu Island, 8; Kauai Island, 8; Niihau Island, 2; Kahoolawe Island, (Reserved). Not less than one-half of the Legislators of each district shall be Native Hawaiians of 50% blood quantum or more and shall be elected by Native Hawaiians. The remaining Legislators of each district shall be elected by Hawaiians of less than 50% blood quantum and may be of any quantum blood.

3. The Legislature shall enact laws to provide for redistricting and apportionment based on data obtained from a national census which shall be conducted every 5 years provided that the first national census shall be initiated within 1 year of the convening of the first legislative session.

SECTION 7. LEGISLATURE; NUMBER OF MEMBERS; ANNUAL SESSION.

The Legislature shall consist of not more than fifty members and not less than thirty members. The sessions of the Legislature shall be annual except as otherwise provided by law.

SECTION 8. LEGISLATORS; TERMS; ELECTION; SALARY; EXPENSES; MILEAGE.

At the general election to be held on __________________, 19____, one-half of the members of the Legislature accruing the highest number of populace votes shall be elected for a term of 4 years, and the remainder for a term of 2 years, and thereafter all members shall be elected for a term of 4 years, with the manner of such election to be determined by the Legislature. Each member shall be nominated and elected in a non-partisan manner and without any indication on the ballot that he is affiliated with or endorsed by any political party or organization. Each member of the Legislature shall receive a salary of not to exceed four hundred dollars per month during the term of his office. In addition to his salary, each member shall receive an amount equal to his actual expenses in traveling by the most usual route once to and returning from each regular or special session of the Legislature. Members of the Legislature shall receive no pay nor perquisites other than said salary and expenses, and employees of the Legislature shall receive no compensation other than their salary or per diem.

SECTION 9. LEGISLATORS: QUALIFICATIONS: FIVE YEAR RESIDENCE IN DISTRICT: REMOVAL FROM DISTRICTS EFFECT.

1. A person shall be eligible to seek Legislative office if on the date of the general election at which he is elected or on the date of his appointment he is a registered voter, and has attained the age of 21 years and has resided within the district from which he is elected for the term of 5 years preceeding his election, unless he shall have been absent on the public business of Ka Lahui Hawai'i. And no person elected as aforesaid shall hold his office after he shall have moved from such district.

2. Legislators shall be citizens of Ka Lahui Hawai'i. Not less than one-half of the Legislators to serve in the government shall be Native Hawaiians, as provided in Section 6(b) herein.

SECTION 10. LEGISLATORS: DISQUALIFICATIONS.

No person holding office under the authority of the United States, or any lucrative elective office under the authority of the State of Hawaii shall be eligible to, or have a seat in the Legislature. No person elected or appointed to the Legislature shall receive any civil appointment to a foreign government office while holding membership in the Legislature or while the Legislature is in session, and all such appointments shall be void. Provided however, that persons who are elected officers at the time of passage of this Constitution shall be exempt from this provision.

SECTION 11. LEGISLATIVE SESSIONS: TIME: QUORUM: RULES OF PROCEDURES: EXPULSION OF MEMBERS: DISRESPECTFUL BEHAVIOR: PENALTY.

Beginning with the year 19____, regular sessions of the Legislature shall be held annually, commencing at 10:00 a.m. on the first Wednesday after the first Monday in June of each year. The duration of regular sessions held shall not exceed 90 Legislative days in odd-numbered years unless extended by a vote of four-fifths of all members elected to the Legislature, and shall not exceed 60 Legislative days in even-numbered years unless extended by a vote of four-fifths of all members elected to the Legislature. Bills and resolutions under consideration by the Legislature upon adjournment of a regular session held in an off-numbered year may be considered at the next regular session, as if there had been no such adjournment. The Kia'aina shall preside, but shall vote only when the Legislature is equally divided. A majority of the members elected to the Legislature shall constitute a quorum; the Legislature shall determine the rules of its proceedings and be the judge of the election returns, and qualifications of its members, shall choose its own officers, including a Speaker to preside when the Kia'aina shall be absent, or incapacitated. No member shall be expelled except by a vote of two-thirds of all members elected to the Legislature, and no member shall be twice expelled for the same offense. The Legislature may punish by imprisonment any person not a member thereof who shall be guilty of disrespect to the Legislature by disorderly or contemptuous behavior in its presence, but no such imprisonment shall extend beyond twenty-four hours at one time, unless the person shall persist in such disorderly or contemptuous behavior.

SECTION 12. LEGISLATIVE JOURNAL; VOTE VIVA VOCE; OPEN DOORS.

The Legislature shall keep a journal of its proceedings and publish them except such parts as may require secrecy and the yeas and nays of the members on any question, shall at the desire of any one of them be entered on the journal. All votes shall be viva voce. The doors of the Legislature and of the Committees of the Whole, shall be open at all times, except during executive session.

SECTION 13. STYLE OF BILLS; MAJORITY NECESSARY TO PASSAGE; YEAS AND NAYS ENTERED ON JOURNAL.

The style of all bills shall be 'Be it enacted by the people of Ka Lahui Hawai'i,' and no law shall be enacted except by bill. No bill shall be passed by the Legislature unless by the assent of a majority of all members elected and the yeas and nays on the question of final passage of any bill shall be entered upon the journal.

SECTION 14. BILLS AND RESOLUTIONS READ BY TITLE; PRINTING; BILLS TO CONTAIN ONE SUBJECT; AMENDED SECTION TO BE SET FORTH; SIGNING OF BILLS.

Every bill and resolution shall be read by title when introduced, and a printed copy provided thereof for the use of each member, and the bill and all amendments thereto shall be printed and read at large before the vote is taken upon its final passage. No such vote upon the final passage of any bill shall be taken, however, until five legislative days after its introduction nor until it has been on file for a final reading and passage for at least one legislative day. No bill shall contain more than one subject, and the same shall be clearly expressed in the title. And no law shall be amended unless the new act contain the section or sections as amended and the section or sections so amended shall be repealed. The Kia'aina, or the Speaker if acting as presiding officer, shall sign, in the presence of the Legislature while the same is in session and capable of transacting business, all bills and resolutions passed by the Legislature.

SECTION 15. MEMBERS OF THE LEGISLATURE; CONFLICTS OF INTEREST; STANDARDS FOR.

No member of the Legislature or any national officer shall have a conflict of interest, as defined by the Legislature, directly or in any contract, with the State of Hawaii, the United States of America, or any country of municipality thereof, authorized by any law enacted during the term for which he shall have been elected or appointed, or within one year after the expiration of such term. The Legislature shall prescribe standards and definitions for determining the existence of such conflicts of interest in contracts, and it shall prescribe sanctions for enforcing this section.

SECTION 16. IMPEACHMENT; PROCEDURE.

The Legislature shall have the sole power of impeachment, but a majority of the members elected must concur therein. Upon the adoption of a resolution of impeachment a notice of an impeachment of any officer, other than a Judge of the Supreme Court, shall be forthwith served upon the Chief Justice, by the Clerk of the Legislature, who shall thereupon call a session of the Supreme Court to meet at the Capitol within ten days after such notice to try the impeachment. A notice of any impeachment of the Chief Justice or any Judge of the Supreme Court shall be served by the Clerk of the Legislature, upon any Judge of the judicial district within which the Capitol is located, and he thereupon shall notify all the Judges of the District Court of the Nation to meet with him within 30 days at the Capitol, to sit as a Court to try such impeachment, which Court shall organize by electing one of its number to preside. No person shall be convicted without the concurrence of two-thirds of the members of the Court of impeachment, but judgment in cases of impeachment shall not extend further than removal from office and disqualification to hold and enjoy an office of honor, profit, or trust, in this Nation, but the party impeached, whether convicted or acquitted, shall nevertheless be liable to prosecution and punishment according to law. No officer shall exercise his official duties after he shall have been impeached and notified thereof, until he shall have been acquitted.

SECTION 17. SPECIAL ELECTION.

In the event that a Legislator be removed by impeachment, arrest, or death, the vacant seat shall be filled by Special Election. The procedures of the Special Election shall be defined by the Legislature.

SECTION 18. NATURAL AND CULTURAL ALIENATION PROHIBITED.

(A) The minerals and other natural and cultural resources of the lands, and submerged lands of the archipelago, and the airspace above the archipelago, as well as the plant, animal, and aquatic lifeforms which dwell therein belong to the Nation and shall never be alienated; but permission may be made by law for the leasing and development of the same.

(B) The lands, airspace and waters of the archipelago as herein described, are declared nuclear free and independent zones.

SECTION 19. NATIONAL HISTORICAL PRESERVATION.

(A) The historical and cultural sites and places of Native Hawaiians and the Nation shall be preserved and perpetuated as a living part of our community life to insure future generations a genuine opportunity to appreciate and enjoy the rich heritage of our Nation.

(B) The Legislature shall establish and maintain a National Register of Historic Places along with supporting documentation locating, describing, and establishing the significance of each site identified.

(C) The Legislature shall initiate measures to protect historical sites and ecosystems, structures, artifacts, and objects of cultural, religious and archaeological significance.

SECTION 20. DONATION OF LANDS PROHIBITED.

Lands under control of the Nation shall never be donated to companies, private corporations, or individuals. There shall be enacted laws to prohibit the sale of all Hawaiian lands to non-citizens.

SECTION 21. PRIVILEGE OF MEMBERS.

No member of the Legislature shall be liable in any civil or criminal action whatever for words spoken in debate.

SECTION 22. ACTS TAKE EFFECT AFTER THREE MONTHS: EMERGENCY BILLS: SESSION LAWS.

No act shall take effect until three calendar months after the adjournment of the session at which it passed, unless in case of emergency, to be expressed in the preamble or body of the act, the Legislature shall, by a vote of two-thirds of all the members elected otherwise direct. All laws shall be published in book form within 60 days after the adjournment of each session and distributed in such manner as the Legislature may provide.

ARTICLE V

JUDICIAL BRANCH

SECTION 1. JUDICIAL POWER:

The judicial power shall be vested in the High Court, the District Courts, and such other courts as may from time to time be created by law.

SECTION 2. INDEPENDENCE OF THE COURTS:

The judicial branch of the Nation shall be independent of the executive and legislative branches.

SECTION 3. ELECTION OF JUDGES:

The Judges of the Nation shall be elected by the majority vote of the citizens of each district.

SECTION 4. QUALIFICATION:

All judges of the Nation shall be citizens of the Nation, shall have necessary experience in conflict resolution and shall be persons of good character.

ARTICLE VI

EXECUTIVE BRANCH

SECTION 1. KIA'AINA:

The executive power shall be vested in the Kia'aina who shall take care that the laws are faithfully executed. The term of office of the Kia'aina shall be four years but not to exceed two consecutive terms. He shall be a resident of no less than three years, a citizen of the Nation, a Native Hawaiian and not less than 30 years of age on the date of his election at the general election. The first election shall be held on ____________________ and every four years thereafter. The Kia'aina shall have the power to veto legislation which veto may be overridden by not less than two-thirds vote of the Legislature.

SECTION 2. LT. GOVERNOR:

The Lt. Governor of the Nation shall have the powers and duties of the Kia'aina in the case of vacancy in the office of Kia'aina or the disability or temporary absence of the Kia'aina. The Lt. Governor shall be responsible for the elections of the Nation and perform such other duties as may be prescribed by law or assigned by the

Kia'aina. The term of office of Lt. Governor shall be four years, but not to exceed two consecutive terms. He shall be a resident of no less than three years, a citizen of the Nation, a Native Hawaiian and no less than 30 years of age on the date of his election at general election.

SECTION 3. SECRETARY:

The Secretary of the Nation shall have the powers and duties of the Lt. Governor in the case of vacancy in the office of Lt. Governor or the disability or temporary absence of the Lt. Governor. He shall record and preserve the laws and executive orders, and perform such other duties as may be prescribed by law or assigned to him by the Kia'aina. He shall be a resident of no less than three years, a citizen of the Nation, a Native Hawaiian and not less than 30 years of age on the date of his election at general election. His term shall be identical to that of the Kia'aina and Lt. Governor. Vacancy of the office of Secretary shall be filled by two-thirds vote of the Legislature.

SECTION 4. SECURITY:

The Kia'aina may summon the posse comitatus or call out the militia to prevent or suppress violence, invasion, insurrection, or rebellion.

SECTION 5. EXECUTIVE REGULATIONS:

The Kia'aina shall have the power to issue executive regulations not in conflict with laws of the Nation.

SECTION 6. SUPERVISION AND CONTROL BY KIA'AINA:

The Kia'aina shall have general supervision and control of all executive departments, agencies and instrumentalities of the Government of the Nation.

SECTION 7. ANNUAL REPORT:

The Kia'aina shall make an official report of the transactions of the Government of the Nation and the Legislature within 90 days after the close of each fiscal year.

SECTION 8. PARDONING POWER:

The Kia'aina and the Legislature by two-thirds vote, shall have the power to remit fines and forfeitures, commute sentences, and grant reprieves and pardons after conviction for offenses against the laws of the Nation.

SECTION 9. RECOMMENDATION OF LAWS:

The Kia'aina shall give the Legislature information on the state of the Government and recommend for its consideration such measures as he may deem necessary and expedient. He may attend or deputize another person to represent him at the meetings of the Legislature, and may giver expression to his views on any matter before that body.

SECTION 10. APPOINTMENT OF OFFICIALS:

With the exception of elective officials, and those which are otherwise provided for in the Constitution, the Kia'aina shall appoint the officials of the Government of the Nation.

SECTION 11. REMOVAL OF OFFICERS: POWERS AND DUTIES OF OFFICERS:

The Kia'aina may appoint or remove any officer whose appointment is not otherwise provided for. All officers shall have such powers and duties as may be conferred or imposed upon them by law or by executive regulation of the Kia'aina not inconsistent with any law.

SECTION 12. PUBLICATION OF LAWS:

The Kia'aina shall make provision for publishing laws within 55 days after the close of each session of the Legislature and for their distribution to public officials and sale to the public.

ARTICLE VII

MISCELLANEOUS PROVISIONS

SECTION 1. OFFICERS:

For the public convenience and to insure continuity in the operation of the Government, all officers of the Nation shall, subject to the right of resignation or removal as may be provided for by law, continue to hold their respective offices until the expiration of the time for which they were respectively elected or appointed and replaced by newly appointed or elected officials.

SECTION 2. EXISTING LAWS:

All laws of the Nation consistent with this Constitution shall continue in force until they expire by their limitation, or are altered or repealed by competent authority.

SECTION 3. AMENDMENTS:

Any amendments to this Constitution may be proposed in the Legislature, and if agreed to by three-fifths of all members of the Legislature, such proposed amendment shall be entered on the journals, with the yeas and nays taken thereon. The Kia'aina shall then be requested to submit such proposed amendment to the voters eligible to vote for the members of the Legislature at the next general election. A majority of such voters voting must approve such amendment.

SECTION 4. REVISION OF THE CONSTITUTION:

A constitutional convention shall be convened within 2 years from the date of passage of this Constitution, thereafter at 3 years, then at 5 years, and thereafter every 10 years after the adoption of this Constitution to review, amend, or revise the Constitution as may be appropriate. The holding of the convention shall be held as provided by law.

SECTION 5. EXISTING RIGHTS AND LIABILITIES:

Except as otherwise provided in this Constitution all existing actions, writs, suits, proceedings, civil or criminal liabilities, prosecutions, judgments, decrees, sentences, orders, appeals, causes of action, contracts, claims, demands, titles, and rights shall continue unaffected notwithstanding the taking effect of this Constitution.

SECTION 6. OATHS:

All Officers and Legislators of the Nation shall, before they enter upon the duties of their respective offices, take and subscribe the following oath:

"I, _______________, of _________________, do solemnly affirm that I will support and defend the Constitution of Ka Lahui Hawai'i against all enemies foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion, and that I will well and faithfully discharge the duties of the office on which I am about to enter, and that I will well and faithfully uphold the laws of the Nation of Hawaii, So help me God."

SECTION 7. NATIVE HAWAIIAN, DEFINITION:

Native Hawaiian is defined as "any descendant of not less than one-half part of the the blood of the races inhabiting the Hawaiian Islands previous to 1778."

SECTION 8. HAWAIIAN, DEFINITION:

Hawaiian is defined as any individual whose ancestors were native of the area which consisted of the Hawaiian Islands prior to 1778.

SECTION 9. CONSTRUCTION:

In this Constitution titles shall not be used for the purposes of construction and wherever any personal pronoun appears it shall be construed to mean either sex; also in this Constitution a special or particular provision shall control a general provision should there be any inconsistency between a special or particular provision and a general provision.

SECTION 10. PROVISIONS SELF-EXECUTION:

The provisions of this Constitution shall be self-executing to the fullest extent that their respective natures permit.

SECTION 11. SEAT OF GOVERNMENT:

The seat of Government shall be at Hilo, Hawaii.

SECTION 12. POLITICAL COUNTIES AND AHUPUAA:

It is hereby recognized that there are eight political counties in the Nation of Hawaii, viz: Hawaii, Maui, Oahu, Molokai, Lanai, Niihau, Kauai and Kahoolawe. The political counties are composed of organized ahupuaa.

SECTION 13. FLAG OF THE NATION:

(Reserved)

SECTION 14. STANDING COMMITTEES OF THE NATION:

(Reserved)

SECTOPM 15. HAWAIIAN GOVERNMENT TITLES:

(Reserved)

SECTION 16. SONG OF THE NATION:

(Reserved)

SECTION 17. EFFECTIVE DATE:

This Constitution shall be effective as of the date of its passage at the First Constitutional Convention, March 15, 1987.

KA LAHUI HAWAI'I
(Nation of Hawai'i)

UA MAU KE EA O KA AINA I KA PONO

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Exhibit "B"

FACT SHEET

KA LAHUI HAWAI'I

I. Synopsis of Presidential and U.S. American Indian Policy

In 1970, President Richard Nixon changed the existing U.S. policy towards America's native peoples by rejecting all past policies which had kept Native Americans wards of the government. He announced a National policy of self-determination of Indian tribes. This was a commitment by the Federal Government to aid and encourage tribal self government. Each successive presidential administration has stood by this commitment and expanded the policy. The highlights of the policy are:

(1) Rejection of the past policy and philosophy that kept Native Americans wards of the government

(2) Fulfillment of the policy, to the highest Federal trust standards.

(3) Strengthening tribal governments and limiting Federal controls on reservations.

(4) Specific recognition of Indian Tribes by the government.

(5) The Tribes right to receive direct block grant funding.

(6) A Presidential Commission to seek ways to improve reservation economies.

(7) Special assistance to build managerial capacities for small tribes.

(8) Seed money to attract funding for economic development projects on reservations.

(9) Coordination of Federal Indian Programs through the Cabinet Council of Human Resources.

At the present time, the administration is committed to remove barriers to self-government and to create a more favorable environment for the development of healthy reservation economies. In order to achieve this, the United States has passed legislation to acknowledge Indian self-determination and has moved to strengthen tribal self-governments in order to establish government to government relationships with its native peoples.

For over 17 years the Native Hawaiian people have been unable to efficiently interface with the United States in obtaining federal recognition or self determination from the Federal Policy. One major problem has been the failure of the Federal and State Trustees to support and fund native efforts to organize, unify and obtain recognition of Native Hawaiian self-governing entities. To this end the Native beneficiaries have undertaken the drafting of a Constitution and the organization of a Nation founded upon principles of peace, disarmament and self-sufficiency.

II. SOVEREIGNTY, SELF-DETERMINATION AND SELF-SUFFICIENCY

The three key elements of nationhood are SOVEREIGNTY, SELF-DETERMINATION and SELF-SUFFICIENCY.

Sovereignty is the ability of a people who share a common culture, religion, language, value system and land base, to exercise control over their lands and lives, independent of other nations.

In order for Native Hawaiian people to exercise control over their lives and property they must be self-determined. Self-determination is realized when the native people organize a mechanism for self-governance. Only when the Native Hawaiian people create a governmental structure which provides for democratic representation of their members and begin to interrelate with the State and Federal Trustees who control their lands will they be able to gain control over their trust assets and their future.

Self-Sufficiency is the goal of nationhood. Self-sufficiency means the people are able to be self-supporting, capable of feeing, clothing and sheltering themselves. It means that they are the motive force for their own farming and pastoral projects.

III. QUESTIONS ABOUT KA LAHUI HAWAI'I - THE SOVEREIGN NATION OF HAWAII

(1) CAN HAWAIIANS BE CITIZENS OF THE U.S. AND KA LAHUI HAWAI'I?

Yes, There is no conflict of interest or loyalty. Ka Lahui Hawai'i, like all other American Native groups (Indian tribes and nations, Eskimos, Aleuts) have an inherent right to form a governing body. All persons who are residents and citizens of Hawaii are now under 2 Constitutions: The U.S. and State of Hawaii Constitution. Once a person enrolls in Ka Lahui Hawai'i they will be a citizen of Ka Lahui Hawai'i. This will not change your U.S. or State citizenship or impact your job, retirement or pension from the U.S. or State.

(2) WHAT IS THE RELATIONSHIP OF KA LAHUI HAWAI'I TO OHA, AND DHHL?

Ka Lahui Hawai'i is NOT a State agency. OHA and DHHL are. OHA is actually a 4th branch of the State government. It has broad powers to help our people, to set STATE policy and to sue the State. Ka Lahui Hawai'i will organize the beneficiaries of the native trusts to stop illegal land exchanges of Hawaiian Home Lands. We need to work together as Hawaiians to "better the conditions of our people".

(3) WHAT DOES '"NATION TO NATION" MEAN?

"Nation to Nation" is a term used to describe how America relates to its native people. Under the existing U.S. policy, America wants to establish government to government relations with its native people. This is why over 200 Indian governments (councils) have been established. When the U.S. gives money, land or programs to the Sioux, or Navaho, federal representatives meet with Indian governments to work out the details. Right now Hawaiians have no such government. This is why Ka Lahui Hawai'i is organizing.

(4) WHAT ABOUT REPARATIONS?

Reparations is everyones' concern. It is the position of Ka Lahui Hawai'i that reparations must involve 3 things:

[1] RECOGNITION OF A SOVEREIGN GOVERNMENT FOR HAWAIIANS:

When the Queen was dethroned our sovereign government was destroyed. The only way to repair that is to re-establish the sovereign government.

[2] LANDS:

Ceded Hawaiian Home and federal lands should be transferred to the sovereign entity to provide for a land base and land based self-sufficiency for Hawaiians.

[3] MONEY:

Money for organizing and maintaining Ka Lahui Hawai'i are needed. Homes must be built, educational and other programs are needed.

(5) WHERE IS KA LAHUI HAWAI'I GOING? WHAT IS THE PLAN?

The interim constitution and legislature are temporary. Ka Lahui Hawai'i needs to have a statewide election within 2 years to ratify the Constitution and elect permanent legislators and an executive. Ka Lahui Hawai'i will seek federal recognition and division of its trust assets so that it, as a government will be able to control its lands, legislature, raise taxes, build homes, etc. Many people, governmental agencies, groups, and the Congress will be involved. This is a 10 year plan.

KA LAHUI HAWAI'I - RESOLUTION OF LEGISLATURE - FOURTH SESSION

Submitted by: ______________
Committee __________ Priority 1 Executive x Priority # 1
Island - Molokai Priority # 1
Ali'i Nui __________ Priority # ________

TITLE: Resolution Relating to Reparations and Restitution Legislation Of the United States Congress to Redress Historical and Present Acts of the United States to the Native Hawaiian People.

WHEREAS: The lawful government of the Native Hawaiian people was overthrown by the complicity of the United States government in 1893;

WHEREAS: The United States by Act of Congress in 1920 and 1959, created two land trusts for Native Hawaiians which trusts are under the exclusive control and jurisdiction of the State of Hawaii;

WHEREAS: The official policy of the United States in relation to native Indian people is foster and encourage native self governance, and whereas this policy has not been extended to Native Hawaiians and Hawaiians;

WHEREAS: The United States has provided native American Indians with administrative procedures for federal recognition of over 300 native Indian nations which procedures exclude federal acknowledgement of native Hawaiians and the government of Ka Lahui Hawai'i;

WHEREAS: The State of Hawaii has failed and continues to fail to appropriate Hawaiian Home Lands to the legal beneficiaries awaiting settlement (17,000+ families) and has failed to segregate the 5(f) trust lands to allocate ceded lands exclusively to and for the benefit of native Hawaiians;

WHEREAS: The native people of the State of Hawaii have petitioned the United States Congress for legislation providing reparations and restitution to them for the above historic and present acts of the United States and the State of Hawaii;

THEREFORE BE IT RESOLVED: That the legislature of Ka Lahui Hawai'i requests that the United States Congress, its agents and federal delegates pass legislation providing for the following:

1. The recognition of Ka Lahui Hawai'i as a sovereign entity separate from the State of Hawaii and United States government and establishment of government to government relations with Ka Lahui Hawai'i;

2. The segregation of the Hawaiian Home Lands trust lands and assets and one-half of ceded Land Trust lands and assets from the public lands of the State of Hawaii and surrender of jurisdiction over these trust assets to Ka Lahui Hawaii;

Exhibit "C"

3. The appropriation of monies and federal programs and services to Ka Lahui Hawai'i for purposes of bettering the conditions of its citizens; which appropriations shall be subject to negotiations with Ka Lahui Hawai'i;

4. The resolution of all legal and title issues resulting from past and present uses of Hawaiian Home Lands by agencies of the United States including but not limited to the lands of Pohakuloa, Hawaii Island and Lualualei, Oahu island, which issues are detailed in the Federal State Task Force on Hawaiian Home Lands dated August, 1983.

Certification

This is to certify that the above resolution was adopted pursuant to the authority vested in the legislature.

Date 6/26/88

Florence Lerback
FLORENCE LERBACK
Secretary, KA LAHUI HAWAI'I

For Transmittal to Native Associations and Organizations, State and Federal Agencies.

Mililani B. Trask
Attorney at Law
1021 University Ave. Rm. 2
Honolulu, Hawaii 96826
(808) 947-5088

September 23, 1987

TO: SENATOR DANIEL INOUYE

THRU: PAT ZELL, ALLEN PARKER

FROM: MILILANI B. TRASK, Kia 'Aina - LĀHUI HAWAI'I

RE: TAYLOR MEMO OF AUGUST 21, 1987

---

(1) Import of Price v. State of Hawaii (764 F.2d (1985) (hereinafter Price).

Price illustrates the legal inappropriateness of applying Indian tests for Federal recognition to Native Hawaiians. In Price the court found that plaintiffs could not meet the Historical Continuity test because the Federal concept of a "tribe" requires a "distinct sovereignty set apart by historical and ethnological boundaries". Senator Inouye has previously indicated his agreement with and support for Reparations due as a result of the complicity of U.S. Minister Stevens and military forces in the overthrow of Liliuokalani in 1983. It is precisely because of the historical overthrow that Hawaiians cannot meet the above test.

The legal and administrative tests applied in Price were tests created for Indians based on their distinct legal and historical relationship with the U.S. These tests cannot fairly be applied to Hawaiians. Consequently, there is a need to create new legislation based on the appropriate legal and historical facts.

Exhibit "D"

(2) Keaukaha I, II, Poafpybitty v. Skelly Oil Co., and The Response of the Deputy Solicitor of the Interior Department dated August 27, 1979.

The Taylor memo of August 21, 1987, has not presented certain important facts relating to the issues named in Keaukaha I and Keaukaha II.

1. The position of the U.S. Department of Justice as stated in its Amicus Curiae brief filed in May, 1978, was that Poafpybitty v. Skelly Oil Co., 390 U.S. 365 (1968) should apply to the Hawaiian situation.

2. By letter dated August 13, 1979, the U. S. Department of Justice through James Moorman indicated that upon request the Justice Department would initiate an investigation and litigation if a meritorious case existed. (Exhibit "A" attached hereto.)

3. Subsequent to the ruling in Keaukaha I and not withstanding the dicta contained therein that, "The United States has only a somewhat tangential supervisory role under the Admission Act, rather than the role of a trustee." The Deputy Solicitor of the Department of the Interior on August 27, 1979, in reference to the above state the following:

> "The Ninth Circuit in construing section 5(f) recently stated: "... the state is the trustee...*** The United States has only a somewhat tangential supervisory role under the Admission Act, rather than the role of trustee." Keaukaha-Panaewa Community Assoc. v. Hawaiian Homes Commission, supra, 588 F.2d at 1224, n. 7. It is true that the state, rather than the United States, holds title to the Hawaiian Home Lands for the use and benefit of native Hawaiians, while the United State' trust responsibility

> with respect to Indian Lands is due in large part to the fact that the United States holds legal title to the land in trust for Indian tribes and individual Indians. Nonetheless, it is the Department's position that the role of the United States under section 5(f) is essentially that of a trustee. Prior to statehood, the United States itself held title to the home lands in trust for native Hawaiians. The term of that trust was defined by the provisions of the Hawaiian Home Commission Act, 1920. Although the United States transferred the lands and the responsibility for administering the act to the state under the Admission Act, the Secretary of the Interior retained certain responsibilities, discussed below, which should be considered to be more than merely ministerial or nondiscretionary. The United States further provided that no substantive changes may be made without the consent of Congress and also retained authority to prosecute breaches of the trust. Taken together, the responsibilities of the federal government are more than merely supervisory and the United States can be said to have retained its role as trustee under the act while making the state its instrument for carrying out the trust. Cf. Act of August 4, 1947, c. 458, Section 1, 61 Stat. 731, 25 U.S.C. 355 note (1976 ed.); Springer v. Townsend, 336 F.2d 397 (10th Cir. 1964) (state court, in approving, pursuant to federal statute, conveyance of restricted Indian land, acted as federal instrumentality)."

4. In February, 1980, the Justice Department commenced an investigation of the problems regarding breach of trust. (Exhibit "B" attached hereto.) We have yet to receive the results of this investigation. The justice Department has not instituted any action on our behalf.

The Taylor memo presents Keaukaha I, II and Price but fails to present the inherent conflict with the above rulings and the actual and official positions of the Department of Justice and Interior. Nevertheless, despite all of the above the fact remains that neither the Federal courts nor the various Federal

Departments involved seem committed to resolving the extensive claims relating to well documented breaches of trust.

We are not interested in a statute which would provide a cause of action without providing monetary damages to redress our claims. We understand that a draft has been prepared for review. Please forward same at your earliest possible convenience.

United States Department of Justice
ASSISTANT ATTORNEY GENERAL
LAND AND NATURAL RESOURCES
DIVISION
Washington, D.C. 20530

August 13, 1979

Mr. Philip Montez
Regional Office Director
Western Regional Office
United States Commission
on Civil Rights
312 North Spring Street
Los Angeles, California 90012

Dear Mr. Montez:

This is in response to your letter of August 1, 1979, concerning the Hawaii Admission Act of March 18, 1959, 73 Stat. 4, as amended, and the Hawaiian Homes Commission Act of 1920, as amended, 42 Stat. 108. The identical letter has been sent to the Secretary of the Interior.

As your letter points out, section 5(f) of the Admission Act requires that certain lands, including the Hawaiian home lands, conveyed by the United States to the State ". . . be held as a public trust for the support of the public schools and other public educational institutions, for the betterment of the conditions of the native Hawaiians . . . for the development of farm and home ownership on as widespread a basis as possible for the making of public improvements, and for the provision of lands for public use." As noted by the Ninth Circuit, section 5(f) contains an ambiguity since it arguably provides that the Hawaiian home lands may be used for the same general public purposes as other federal lands conveyed to Hawaii pursuant to the Admission Act. Keaukaha - Panaewa Community Association v. Hawaiian Homes Commission, 588 F.2d 1216, 1218, n. 2 (9th Circuit, 1979). A petition for certiorari is now pending in the Supreme Court. The subsection further provides that: "such lands, proceeds, and income shall be managed and disposed of for one or more of the foregoing purposes in such manner as the constitution and laws of the said State may provide, and their use for any other object shall constitute a breach of trust for which suit may be brought by the United States,"

EXHIBIT "A"

In response to the specific questions raised in your letter, we offer the following:

1a. The Department of Justice would have the exclusive litigation authority if suit were brought by the United States to enforce the trust. The Department of the Interior has no authority to file lawsuits on behalf of the United States. It is our view, however, that individual beneficiaries of the trust may also file suit if they believe the trust to have been violated. In this respect, we disagree with the Ninth Circuit's decision in Keaukaha - Panaewa, supra.

1b. The authority to initiate litigation is discretionary, rather than mandatory.

1c. If a request is made to the Department of Justice by the Secretary of the Interior to initiate legal action against the State of Hawaii, we would review the request to determine if the case has legal merit and factual support. If we find that a meritorious case exists, we would file an action.

1d. No actions have been filed by the United States.

1e. The State of Hawaii has the responsibility to administer the lands in accordance with the Admission Act and the State's constitution and laws. If the State fails to fulfill this responsibility, the United States is authorized to bring suit to require the State to fulfill its responsibility.

2. The series of questions in Part 2 relate to the function of the Secretary of the Interior. We defer to the Department of the Interior with respect to these issues.

Sincerely,

James W. Moorman

James W. Moorman
Assistant Attorney General
Land and Natural Resources Division

UNITED STATES DEPARTMENT OF JUSTICE

WASHINGTON, D.C. 20530

February 20, 1980

Address Reply to the
Division Indicated
and Refer to Initials and Number
MEF:KAMarra
90-6-0

Mitsuo Uyehara, Esquire
Ho'Ala Kanawai, Inc.
1021 University Ave., Room 2
Honolulu, Hawaii 96826

Dear Mr. Uyehara:

This letter is in response to your request that the United States investigate alleged violations by the State of Hawaii of the rights of native Hawaiians. You will be please to know that the federal government is presently investigating the matter. Once the investigation has been completed, the United States will initiate appropriate action, if any such action is warranted.

If you have any other questions regarding this matter, please do not hesitate to contact us.

Sincerely,
James W. Moorman
Assistant Attorney General
Land and Natural Resources Division

By: Rembert A. Gaddy
Rembert A. Gaddy
Acting Chief, Indian Resources Section

EXHIBIT "B"

MILILANI B. TRASK
ATTORNEY AT LAW
1021 UNIVERSITY AVENUE, ROOM #2
HONOLULU, HAWAII 96826

October 14, 1987

To: Senator Daniel Inouye

Thru: Pat Zell, Allen Parker

From: Mililani B. Trask, Kia 'Aina, LAHUI HAWAI'I

Re: Mahsetky Memo of August 13, 1987

(A) ROLE OF HAWAIIAN HOMES COMMISSION

The Mahsetky memo fails to explore or present any relevant data regarding the Hawaiian Homes Commission, hereinafter "Commission".

The failure of the Commission to adequately perform its fiduciary obligations has been extensively documented. The findings and recommendations of the Federal State Task Force on Hawaiian Home Lands issued in August 1983, verifies that the Commission has failed to administer its trust lands for the benefit of native Hawaiians. To wit:

	Finding
1. There is no prospect that eligible beneficiaries on waiting lists can be accomodated, in 1983 there were 8,300 on lists, in 1987 there are 16,000+ waiting;	Page 30
2. The Commission has engaged in numerous transfers and withdrawals of trust lands in apparent breach of trust;	Page 39
3. The Commission has issued numerous general leases of trust lands to State and Federal agencies for nominal consideration and failed to negotiate fair compensation for same;	Page 45

Exhibit "E"

To: Senator Daniel Inouye
Thru: Pat Zell, Allen Parker
From: Mililani B. Trask
Re: Mahsetky Memo of August 13, 1987
October 14, 1987
Page 2

	Finding
4. The Commission has allowed the "taking" of trust lands for public purposes;	Page 47/48
5. The Commission has failed to seek compensation for present use of trust lands by non-beneficiaries;	Page 50
6. The Commission has no active programs to identify and protect surface and subsurface national resources including water which are trust assets;	Page 56
7. The Commission has failed to maintain a complete and accurate inventory of Hawaiian Home Lands.	Page 59

These and other problems have existed for over sixty (60) years. No meaningful progress has been made by either the State or Federal government to rectify these problems or to implement the recommendations of the Task Force. Neither the U.S. Department of Justice nor the Department of the Interior have taken any action to resolve these problems.

Contrary to Mr. Mahsetky's memo, the Commission in fact does not administer these trust lands for the benefit of native Hawaiians.

LĀHUI HAWAI'I agrees that the Admissions Act should be amended to allow beneficiary control of these lands. We assert that native Hawaiians should be allowed to exercise jurisdiction over their lands as a political entity. The structuring of LAHUI HAWAI'I provides this mechanism and a recepticle for self-determination.

To: Senator Daniel Inouye
Thru: Pat Zell, Allen Parker
From: Mililani B. Trask
Re: Mahsetky Memo of August 13, 1987
Page 3

(B) ROLE OF OFFICE OF HAWAIIAN AFFAIRS

The establishment of the Office of Hawaiian Affairs, hereinafter "OHA", is not the result of annexation or the Organic Act. I forward herewith the Outline of Chronology of the Native Land Trusts which provides the native perspective of salient events relating to OHA. A copy of the Hawaii Ceded Land Trust; Its Use and Misuse, is in the Library of Congress. The latter contains a bill drafted and lobbied by the native people for formation of a corporate entity to receive these trust assets and administer same. Page 106 of the Chronology accurately reflects that OHA was created to prevent native people from gaining control of their lands. Please read these documents.

OHA was not created by native Hawaiians. It was created by delegates of the general public at a State Constitutional Convention in 1978. The relevant Standing Committee Reports indicate that the following are true:

1. OHA is a State agency based on the model of the University of Hawaii, however, unlike the Board of Regents of the University of Hawaii, OHA Trustees do not have "exclusive jurisdiction" over the internal organization and management" of its affairs. Senate Judiciary Report S.C.R. 784 at 1352.

2. OHA as a governmental agency is subject to the laws enacted by the legislature of the State of Hawaii. Standing Committee Report No. 784, in 1979, Senate Journal at 1352.

3. S.C.R. No. 784 also found that:
(a) The statement in Committee on Whole Report No. 13, that the establishment of OHA was intended to grant the "power to make their own substantive rules in internal matters", is inconsistent with what was presented to the voters for ratification and cannot be given consideration. Id p.1352

(b) The purpose of OHA is not to afford recognition of natives' distinct and unique cultural, traditional

and legal status within the public trust. As stated in the report:

"Your Committee notes that inherent in our commitment to those rights is our duty to seek with incessant endeavor a society in which race, sex, and all other antitheses to merit would disappear. We are therefore committed to the ultimate "melting pot", to the interdependence of all peoples, and to social, economic, cultural and educational mobility based on merit."

"We are also cognizant of the fact that some may view H.B.No. 890, H.D.1,S.D.1 as standing in contradiction to Hawaii's commitment to equality because it is addressed to the needs of a specific people, the Hawaiians, and to aid their establishment of ethnic identity. If this bill appears divisive in this regard, it is not the legislature's intent that it should be so. It is rather our intent that the Office of Hawaiian Affairs should bring to eventual reality the equal participation of Hawaiians in the ultimate homogeneous and perfectly equal society that we seek to acheive for all posterity." Id p. 1352

(c) Provisions "E" and "F" of the report provides great insight regarding the position of the State of Hawaii regarding OHA's actual status as a sovereign entity.

" E. The State's Plenary Power Over the Office of Hawaiian Affairs. To give specific definition to the language "provided by law" as found in article XII, Section 6, we turn to the case of Santa Clara Pueblo v. Martinez, 98 Sup.Ct. 1670 (1978) cited in Committee on the Whole Report No. 13, where on page 1676 of that decision it is noted that despite the recognition given Indian tribes as distinct and independent communities, Congress retains "plenary authority to limit, modify or eliminate the powers of local self-government which the tribes otherwise possess." This is not to intimate that the Office of Hawaiian Affairs is equated with Indian tribes. Rather, it is merely to state that even if that was the case, the State would retain plenary powers over it."

" F. The Office of Hawaiian Affairs and Constitutional Provisions. Santa Clara Pueblo, supra, moreover, demonstrates the danger to constitutional

> rights if status equal to Indian tribes should ever be accorded the Office of Hawaiian Affairs. That case involved the question of whether equal protection guarantees of the Indian Civil Rights Act was violated by tribal ordinance under which the offspring of a mixed marriage in which the woman is a Santa Clara Pueblo were disqualified from membership in the tribe, whereas the mixed marriage offspring of a male member suffered no such disadvantage. The United States Court of Appeals of the Tenth Circuit held that the tribe was not justified in deviating from the Fourteenth Amendment's equal protection clause. However, the United States Supreme Court overruled the Tenth Circuit, on the narrow holding that Mrs. Martinez's suit against the tribe was barred by the tribe's sovereign immunity."
>
> "Your Committee notes that H.B. No. 890, H.D. 1, S.D. 1 contains no language establishing sovereign immunity in the Office of Hawaiian Affairs or intimating its supercedence over Constitutional rights. We would state unequivocally that the creation of the Office of Hawaiian Affairs is not intended to allow any erosion of constitutional rights afforded under the United States Constitution or under the Constitution of the State of Hawaii. This is not to infer that infringement of Constitutional rights is being, or was ever, contemplated. Rather, it is to clarify that where any policy decision by the board of trustees of the Office of Hawaiian Affairs is deemed to conflict with Constitutional rights, it is intended that enforcement of those rights are to be available through the courts of this State and those of the United States." Id p. 1353.
>
> I am sending copies of the Senate Journal for your review. Please read these documents.

The management audit of OHA released publicly in 1987 verifies that OHA suffers from a severe lack of internal organization and administrative leadership, has no cycle of planning and evaluation, has no sound fiscal policy, has no standard for hiring and review of its Administrator, has failed to update its Master or Cultural plans, has no budget process and cannot work with other agencies.

Several external organizations and legislators were polled regarding their dealings with and impressions of OHA. The survey is included in the audit. The results of the survey should be seriously considered by your staff before they commence drafting legislation to make OHA a sovereign entity. Please read the audit. LAHUI HAWAI'I opposes any plan to convert State agencies to sovereign nations.

C. State Agencies as "Successors in Interest" to the Monarchy.

The Mahsetky memo is incorrect in its assertion that OHA and the Commission are the "successors in interest" to their sovereign powers. This is one point on which the Majority and Minority Native Hawaiians Study Commission Reports do agree.

The lawful government of the Kingdom was overthrown in 1893. The provisional government usurped power with the complicity of the American government. Subsequently upon annexation the provisional government conceded to becoming a Territory, Statehood followed.

OHA and the Commission are successors in interest to the provisional government. At no time since the overthrow of the monarchy have native Hawaiians, acting exclusively, created a mechanism for self-governance. The Commission was created by U.S. Law in 1920 and made part of the compact for admission into the Union in 1959. OHA was created by the public in 1978. LAHUI HAWAI'I is the first democratically constituted political entity exclusively created by native people.

Your response is greatly appreciated.

[illegible]

United States Senate
SELECT COMMITTEE ON INDIAN AFFAIRS
WASHINGTON, DC 20510-6450

March 16, 1988

Ms. Mililāni B. Trask
Attorney at Law
1021 University Ave. Rm. 2
Honolulu, Hawaii 96826

Dear Ms. Trask:

I have received your letter of March 8, 1988.

As you may know, the Governor has created a task force made up of his staff and OHA trustees. This task force is endeavoring to resolve the ceded lands question which hopefully will, among other things, preclude the need for a "right to sue" bill. In the meantime, the Governor has requested that I not pursue this issue on a federal level.

Thank you for contacting me. I hope you will feel free to communicate with my office in Hawaii to schedule an appointment with me.

Sincerely,

Daniel K. Inouye
Chairman

Exhibit "F"

Mililani B. Trask
Attorney at Law
1021 University Ave. Rm. 2
Honolulu, Hawaii 96825
(808) 947-5088

April 5, 1988

Senator Daniel Inouye
Senate Select Committee on Indian Affairs
Room 722, Hart Senate Building
Washington, D.C. 20510

Dear Senator Inouye:

I am in receipt of your letter dated March 16, 1988. My response and that of "Ka Lāhui Hawai'i" and "Civil Rights for Hawaiians", the local coalition which has lobbied for Standing to Sue legislation for the past five years is as follows:

1. We consider the right of Hawai'i's native people to seek legal redress of their grievances relating to the native trusts established for their benefit pursuant to State and Federal law to be a basic civil right. This is a deprivation of constitutional magnitude. Every American, regardless of race is entitled to their day in court before an impartial Judge and Jury of their peers. The fundamental principles of trust law requires that beneficiaries have a legal right to sue their trustees for accounting of and rehabilitation of mismanaged trust assets. Furthermore, trust law provides that trustees who breach their fiduciary duties can be made to monetarily compensate the trust beneficiary and the trustees. I submit that the reluctance of the State and the federal government to provide Native Hawaiians and Hawaiians access to the federal and state court system is directly related to their unwillingness to pay redress and make reparation to the native people and trusts for well documented and extensive mismanagement of trust assets and breaches of fiduciary duties.

2. The Federal State Task Force in Hawaiian Home Lands contained the following findings, recommendations, and supporting data:

   A. FINDINGS and RECOMMENDATIONS:

BENEFICIARIES "RIGHT TO SUE"

FINDINGS

It is now well established that in dealing with eligible native Hawaiians, the Hawaiian Homes Commission must meet the high standards which a trustee owes to beneficiaries. The Hawaii Supreme Court has stated that it will strictly scrutinize the actions of the government in administering the Hawaiian Homes trust on behalf of the beneficiaries.

The Hawaii Admission Act states that the United States may sue for breach of trust if Hawaiian Home lands or their proceeds are used for purposes other than the trust. Unlike some other state Admission Acts, the Hawaii Admission Act does not expressly authorize HHCA beneficiaries to bring an action to enforce the trust.

While the United States and the State of Hawaii have obligations to superintend the trust, the beneficiaries are the parties most concerned and directly affected by the decisions of the Hawaiian Homes Commission. Over the years, the beneficiaries and homestead associations have demonstrated a keen interest in the administration of the program and have resorted to court actions to enforce various provisions of the trust with significant results.

The United States has recognized the need for this role by the beneficiaries and has consistently supported their right to bring suit for breach of trust in both State and Federal courts.

Congress could enact legislation that would expressly grant beneficiaries the right to sue in Federal court for breach of trust. The Hawaii Legislature could enact similar legislation that would expressly authorize such lawsuits in State court. Such legislation need not amend either the HHCA or the Hawaii Admission Act.

RECOMMENDATIONS:

The Hawaii Legislature should enact legislation which would resolve present uncertainties by granting beneficiaries the right to sue for breach of trust in State courts. (10) (See note 4)

Congress should enact legislation granting beneficiaries the right to sue for breach of trust in Federal court. (11) (See note 5)

B. APPENDIX 6 - FEDERAL RESPONSIBILITIES:

• THE TRUST QUESTION:

The question arises as to whether the responsibilities described above are the only ones the Federal Government now has for the Hawaiian Homes Commission program. Does a recital of these three sections from the Statehood Act and the Homes Commission begin and end the description of the responsibility of the United States?

Responsible observers are not now of one mind as to the answer. Some contend that the United States had before Statehood, and has retained since Statehood, the role of a trustee with respect to Hawaiian home lands. They consider that the United States thus owes a fiduciary duty in its treatment of the beneficiaries of the Homes Commission program. In support, those who hold this view point to a recent decision of the Hawaii Supreme Court (Ahuna v. Department of Hawaiian Home Lands ___Haw.____ (1982), in which Chief Justice Richardson stated that:

-- the legislative history of the Homes Commission Act "strongly suggests that the federal government stood in a trusteeship capacity to the aboriginal people", and

-- the "tenor" of Congressional committee language "implies an intent to establish a trust relationship between the government and Hawaiian persons".

A position to the same effect was expressed in 1979 by the Deputy Solicitor of the Department of the Interior, in a letter to the Western Regional Office of the U.S. Commission on Civil Rights. He wrote that:

-- "Prior to statehood, the United States itself held title to the home lands in trust for native Hawaiians"; and

-- since statehood, "it is the Department's position that the role of the United States under section 5(f) is essentially that of a trustee".*

C. APPENDIX 13 - IMPROPER LAND USE BY NON-BENEFICIARIES:

"IV. COMPENSATION FOR PAST MISUSE

The vast majority of the unlawful land transfers occurred prior to statehood. 7/

Most misuses of Hawaiian Home Lands began decades ago. 7/ Through the years, the Department of Hawaiian Home Lands has received little or no compensation for use of its lands by the general public. As a result, eligible native Hawaiians for generations have been deprived of the beneficial use of this land, as well as revenues which could have placed more eligible beneficiaries on the land."

"...Such misuses of Hawaiian Home Lands appear to constitute breaches of trust for which compensation is due and owing, but lawsuits for back compensation present substantial problems.

It is difficult to assess who should be liable for past misuses. The vast majority of the misuses occurred while Hawaii was a territory and the Hawaiian Homes program was a federal law which could only be amended by Congress.

Most of the misuses were authorized by territorial governors or commissioners of Public Lands. Individual members of the Hawaiian Homes Commission tolerated these abuses of Hawaiian Home Lands, but lacked the benefit of current court decisions which describe their trust responsibilities. The State of Hawaii agreed in a compact, to administer these lands in trust, but until recently has made no effort to resolve these misuses of trust lands. Various federal, state, and county agencies have all profited from the use of these lands over the years."

"...In a lawsuit to resolve back claims for improper land use, it would probably be necessary to join many of the parties described above, all of which might share responsibility for a particular misuse.

Numerous defendants with conflicting interests would be likely to create a tangle of cross-claims and counter-claims."

"Claims for wrongful back use are ordinarily joined with claims for present possession or compensation. However, damage claims for wrongful back use can substantially delay settlement and compensation for present use for the reasons described above.

It would appear more beneficial to the program for the Department of Hawaiian Home Lands to concentrate on obtaining possession and compensation for lands which it claims are presently in use by other agencies or individuals.

If a lawsuit results over a particular parcel of land, the Department of Hawaiian Home Lands should assert any claims for wrongful back use, but should place priority on resolving present use and compensation problems. If claims for wrongful back use cannot be settled, all public agencies involved should resolve ongoing use problems, but should expressly reserve their right to prosecute or defend claims for wrongful back use in the future.

This does not mean that past misuses of Hawaiian Home Lands should be forgotten. The Department of Hawaiian Home Lands and native Hawaiians should seek to remedy such abuses of Hawaiian Home Lands through the state legislature and/or Congress. Through this means, special legislation could be enacted which would compensate native Hawaiians for past misuses of Hawaiian Home Lands either through additional funding or added grants of land."

D. APPENDIX 9 - RIGHT OF ACTION FOR BENEFICIARIES OF HHCA:

IV. THE NEED FOR A RIGHT OF ACTION BY THE BENEFICIARIES

While the right of beneficiaries to bring suit against the Commission for breach of trust has not been established, the need for such a right is clear.

The United States is vested with authority to sue for breach of trust under the Admission Act, but federal agencies cannot be expected to oversee the desicions of the Hawaiian Homes Commission on a day-to-day basis. Until recently, the United States has made no attempt to monitor the Hawaiian Homes Program nor have agencies of the United States provided a meaningful, independent review of Hawaiian Home Land transfers, as may have been comtemplated by the Admission Act. 5/

Nor can the State of Hawaii be relied upon to effectively supervise the trust. There is an inherent conflict between the needs of native Hawaiian beneficiaries for land and revenue and similar needs by other state agencies for the general public. Because of this conflict, and the independent status of the Hawaiian Homes Commission, the state executive branch should not assume sole responsibility for assuring that the Hawaiian Homes Commission satisfy its trust responsibilities.

By the very nature of their position, beneficiaries and associations of beneficiaries have proven to be the parties most actively concerned with proper administration of the trust by the Hawaiian Homes Commission. They are directly affected by Commission decisions. Beneficiaries and homestead associations have demonstrated a keen interest in the administration of the program over the years. Despite the lack of an express right to sue, they have resorted to court action to enforce various provisions of the trust and the Hawaiian Homes Commission Act with significant results. 6/

The United States has recognized the need for this role by the beneficiaries and has consistently supported the right of the beneficiaries to bring actions for breach of trust in either state or federal courts. 7/

6/ See for example:

Keaukaha-Panaewa Community Association v. Hawaiian Homes Commission, No. 75-0260 (Haw. D.C. 1976), which determined that land exchange and licensing procedures of the Department were contrary to provisions of the HHCA and in breach of trust.

Aki v. Beamer, Civ. 76-0144 (D.C. Haw. 1978), found that the appropriation of Hawaiian Home Lands by a governor's executive order was a violation of the HHCA.

Price v. Dept. of Justice, C.A. Nol. 80-2794 (D.D.C., filed Oct. 31, 1980), which provided the impetus for the formation of the State Federal Task Force.

Ahuna v. Department of Hawaiian Home Lands, 64 Haw. 327 (1982), which determined that the policy of awarding agricultural lots on a permissive use basis violated provisions of the HHCA. The appeal described the nature of the trust obligations of the Department of Hawaiian Home Lands in detail for the first time.

Kaniho v. Padeken, Civ. No. 6108, Haw. Third Cir., has challenged the practice of leasing Hawaiian Home Lands to non-beneficiaries for revenue production.

7/ See Brief of the United States, submitted as Amicus Curiae in Keaukaha-Panaewa Community Association v. Hawaiian Homes Commission, supra, datd May 1978, appended as Attachment A; and a letter from U.S. Department of Justice, Land and Natural Resources Division to the United States Commission on Civil Rights dated August 13, 1979, appended as Attachment B.

V. RECOMMENDATION:

Present legislation concerning the Hawaiian Homes program does not expressly grant or deny beneficiaries the right to sue to enforce provisions of the Hawaiian Homes Commission Act or to hold the trustee accountable for its fiduciary responsibilities. As a result, the right of beneficiaries to sue to enforce the trust remains a source of dispute between the administration of the Department of Hawaiian Home Lands and the beneficiaries.

Nothing precludes the state legislature from expressly granting the beneficiaries the right to sue in state court to enforce the provisions of the trust. Such legislation could take the form of an amendment to the Hawaiian Homes Commission Act or could be enacted as state legislation separate and apart from the Act. Inasmuch as such a measure would appear to expand and extend the rights of the beneficiary, congressional approval for such an amendment to the Hawaiian Homes Commission Act would not be necessary.

Similarly, Congress has the power to reverse the result of the decision in Keaukaha by enacting federal legislation which would grant native Hawaiians access to federal courts to enforce provisions of the Hawaii Admission Act. Such legislation should not amend the Admission Act, but should be enacted as a separate federal law. 8/

Legislation should be enacted by both the State Legislature and Congress which will allow beneficiaries to sue to enforce the trust in either state or federal court.

3. Your impression that current negotiations between the Executive and OHA preclude the need for a "Right to Sue" bill are erroneous. Mr. Andrew Levin and Mr. Warren Price have tried unsuccessfully to create this impression in order to undermine passage of legislation. On February 9, 1988, I sent a letter, attached, to OHA for clarification of this point. On February 23, 1988, I received OHA's response, exhibit A. It is obvious that OHA continues to support legislation in this area.

4. On March 30, 1988, "Civil Rights for Hawaiians" met with Governor Waihe'e. He indicated that he was not predisposed against passage of our proposed draft but also felt a need to create a dialogue and process by which the Hawaiian community might examine the broader long term problems facing our people.

   The Governor expressed concern that the United States should also be made to pay its fair share of damages for misuses of the trusts as documented by the Task Force. He indicated that it was inequitable for the State to be made to shoulder the responsibility for "inherited problems."

   We agree with the Governor's position. There is an immediate need for the United States to waive its sovereign immunity and to allow legal access not only to the native people but to the State as well.

To date, the federal delegation has failed to sponsor "special legislation" aimed at compensating "native Hawaiians" (not state agencies) for "past misuses of Hawaiian Home Lands." See section 2C above. Consequently, we must request that you proceed with all due haste to enact legislation which provides native beneficiaries and the State access to federal court to litigate claims relating to the two native trusts created for their benefit.

5. As you are aware there have been increasing acts of civil disobedience by natives relating to the problems above. The "Kaawa incident" which we discussed in August 1988 presents the first instance of natives taking up the gun to redress land claims. Ka Lāhui is dedicated to peace, disarmament, equity, and justice. These occurrances provide us with a great incentive to present another alternative to conflict resolution, here at home. Our ability to convince po'e Hawai'i that there is some reason to have faith in the "American legislative and judicial processes depends in larger part on the willingness of yourself and the federal delegation to make available, avenues for legislative and judicial redress of these historical problems.

Your response is greatly appreciated. I attach exhibit B, our proposed community draft of the legislation and a current news article on the subject.

Sincerely,

Mililani B. Trask
Kiaaina, Ka Lāhui Hawai'i

cc:Governor Waihe'e
Ka Lāhui Hawai'i
Community Groups

TESTIMONY OF LIKO O KALANI MARTIN

Before the Senate Select
Committee on Indian Affairs
Honolulu, Hawaii
August 26, 1988

Good morning Mr. Chairman, members of the committee, distinguished guests, and participants at this hearing. This panel was formed by participants at the recent Native Hawaiian Rights Conference, sponsored by the Office of Hawaiian Affairs, held on August 5, 6, & 7th at the Kamehameha Schools. By no means does this panel represent all the views on Hawaiian issues, nor is this an attempt to grandstand individual personalities. Rather, it is a sincere effort to present ideas and clarify facts, as well as offer a formula for restoring Hawaiian sovereignty and independence.

Mr. Chairman, we recognize that Hawaiian issues are exceedingly complex -- historically, culturally, economically, and legally. Still, beyond the seemingly endless array of legal issues and varying interests, there are basic issues that need to be addressed.

Hawaiian organizations and their leaders have pursued many options to establish, define, and receive basic entitlements provided in the State Constitution and in federally recognized programs and rights of native Americans.

Today, as a result of productive discussions and presentations at the well-attended Native Hawaiian Rights Conference, we are presenting a comprehensive, yet broad, reform package that could assist the many Hawaiian organizations to work cooperatively. A five-point plan was adopted at the conference in a resolution form, after intensive discussion. We feel that this committee, in its concern for Hawaiians, may benefit from the guidelines and priorities that are identified in the framework of the resolution.

The five points in the plan could provide the basis for a cohesive and comprehensive strategy, for coordinating and uniting the the Hawaiian people and their respective organizations. The five-point plan is an attempt to prioritize concerns related to sovereignty, land, cultural rejuvenation, and the restoration of Hawaiian pride and dignity.

Mr. Chairman, we view today's hearing as a new beginning and will look forward to discussing our proposal, along with other recommendations, with you and your staff in the upcoming months. The five guiding principles of the strategy for achieving Hawaiian restoration, as adopted by resolution of the participants at the conference, are:

1) An apology by the United States government to Native Hawaiians and their government for the U.S. role in the coup of 1893.
2) A substantial land and natural resource base comprised of a reformed Hawaiian Homes program, a fair share of the ceded lands trust, the return of Kaho'olawe, and other appropriate lands.
3) Recognition of the Native Hawaiian Government , with sovereign authority over the territory

within the land base.

4) Guarantees of: a) substantial beach access
    b) fishing, hunting and gathering rights
    c) protections for Native Hawaiian religious practices and historic sites

5) An appropriate cash payment.

I shall begin on the subject of the coup of 1893, and open a page out of the unchangeable past, offering a reclarification, for the present's sake, of Hawaiian history. In 1893, the United States of America inherited the trust responsibilities and also the requirement of restoration, to undo and make right the acts committed against Queen Lili'uokalani and the Hawaiian Nation.

It is now 1988, and the Hawaiian people remain "a nation without a homeland".

Throughout the 1970s and '80s, the Hawaiians have striven to re-establish their sense of nationality and loyalty to cultural traditions, and have acted with remarkable restraint, humility, and in good faith. Yet, above all, they have carried themselves in the true spirit of aloha.

More than being native born, they are the aboriginal descendants of this archaepalago, and are linked to an inherited indigenous culture, with incontestible rights and authorities over the territories of the Hawaiian Islands.

Ninety-five years after the tragedy of 1893, the call for independence and sovereignty is still echoing in the streets and in the by-ways, through the courtrooms, even as far away as the U.S. mainland and Geneva. The future destiny of Hawaiians can and should be in our hands.

Hawaiians have been told that their government was overthrown. That single mis-representation of fact has left our people with a sense of shame and dishonor. The historical facts of the events in 1893 are quite to the contrary. In fact, Queen Liliuokalani, in order to avoid bloodshed, formally abdicated until, as she put it, "the Government of the United States shall...undo the action of its representative, and reinstate me in the authority which I claim as the constitutional sovereign of the Hawaiian Islands". How long will this mis-representation be perpetrated?

Today, Hawaiians suffer from culture shock, and large portions of our population are alienated and incarcerated, while many kupuna and makua are cancer-ridden, just for the lack of a good old taro patch, and clean waters from which to gather fish.

As I am seeing it, in my travels from ahupua'a to ahupua'a and from meeting to meeting, Hawaiians are being herded onto foreign and confining pastures, and being forced to segregate and discriminate amongst themselves. What will the future hold for the thousands of Hawaiians who are active in the cultural renaissance? Even if the island of Kaho'olawe is returned, its sacredness and beauty has already been brutally defiled. So, let us not use Kaho'olawe as a scapegoat. We are calling for human respect and honor amongst those who have the power that they should recognize that now is the time to restore our lands and sovereignty.

The Congress of the United States should take a greater responsibility for its obligations. Reparations or restitution, in the form of a cash payment, is absolutely unacceptable to us. Rather, Congress should promptly proceed to make restoration of sovereignty and land in acordance with the five points that have already been mentioned.

Congress has the power to compensate Hawaiian Natives under various Constitutional provisions. Therefore, pursuing matters of compensation based on alleged wrongful acts in the U.S. Claims Court, or by congressional or presidentially appointed commissions, would be pointless. The majority report in the 1983 Native Hawaiian Study Commission already concluded upon extensive investigation, and in lieu of insufficient evidence, that the Hawaiian people are not entitled to reparations. To review those past findings or attempt to inject new evidence and establish a legal claim would be, in my opinion, a frivolous action, side-stepping the real issue: restoration of an independent national status to the Hawaiians, and the return of, and title to, the autonomous authority over, the lands that the United States received in treating with the Republic of Hawaii in 1898, which have subsequently been transfered to the State of Hawaii. Congress should act directly without referring the issues either to the Claims Court or a new commission.

I can offer only one other procedural method. That perhaps these matters of such solemn consequences could be formally attended to, by a convened congress of Hawaiian people, under the guidance of an international tribunal, sanctioned by the United Nations, and presided over by representatives of the World Court. At this point in time, any other remedial options may only add confusion and delay.

In closing, I would like to leave you with these thoughts. The acts that we partake in will either liberate us, or leave our future generations to continue on, in disregard, disrespect, and disgust. Do we lift the burden from the shoulders of our children, or do we bury them with our infirmity, ignorance, and neglect? The opportunities to settle the questions of national restoration and recognition and the social inequities that we live with, are before us now. In order for Hawaiian people and their culture to survive, we must co-exist in a spirit of friendship with all the nations and peoples of the world, each one, being the masters of their own destiny.

Thank you very much Mr. Chairman, committee members, and honorable participants.

TESTIMONY OF JULIE-ANN CACHOLA

Before the Senate Select Committee on Indian Affairs
Keoni Auditorium, East-West Center
Honolulu, Hawaii
August 26, 1988

Mr. Chairman, members of the committee, and to all the distinguished participants in this historic occasion, ALOHA. My name is JULIE-ANN CACHOLA, a member of Na'au Pono. I moderated the sovereignty and self-determination panel at the Native Hawaiian Rights Conference recently held at Kamehameha Schools on August 5 and 6, 1988.

Today, we are talking about a comprehensive strategy that will facilitate a unified direction for Hawaiian native policy. You have heard the overview of the strategy and you have heard about the first focal point: the restoration of Hawaiian pride and dignity through a formal recognition of the illegal overthrow of our Queen.

Plank two of the strategy addresses the critical need for a Hawaiian land base, managed by a sovereign Hawaiian government for the betterment of Hawiian conditions. The facts about the lack of a Hawaiian land base have been stated relentlessly. I will not encumber this testimony with the available and known facts; I refer you to exhibits A, B, and C for this detailed information.

The administering of a Hawaiian land base, the specifics in terms of methods, procedures, and jurisdiction is not addressed here. These historically divisive factors can and will be worked out among the various Hawaiian organizations and interest groups. What is needed now is a substantial land and natural resource base, comprised of a reformed Hawaiian Home lands program, a fair share of the ceded lands trust, the return of Kaho'olawe, and other appropriate lands. These lands have long been a focal point for grievance and, ultimately, restoration and restitution.

A land base has been and continues to be the physical and spritual center for the Hawaiian people. Social and economic indices of Hawaiians demonstrate the impact of alienation from a land base. This alienation has ripped through our people, families, and communities. In our culture, the land defines the people, and the people define the land. Without the land base, culture remains abstract and passive. A living, active culture, one that can rejuvenate Hawaiian identity, requires an accessible land base. Culture and traditions need to be excercised, but this, again, requires the physical focal point of a Hawaiian land base.

The need for reform of the Hawaiian Home lands program is clear (see exhibit A). As you know, in 1921, Congress passed the Hawaiian Homes Commission Act of 1920 which set aside approximately 200,000 acres of lands for residential, pastoral, and agricultural homesteading, to be administered by the Hawaiian Homes Commission. The intent of Congress was to promote the rehabilitation of native Hawaiians. The trust duties include: 1) the obligation to administer the trust solely in the interest of the beneficiary, and 2) the use of reasonable skill and care to make trust property productive. With neither sufficient natural resources to sustain agricultural or pastoral activities on these lands, nor the financial commitment by the federal and State governments to aggressively place native Hawaiians on homesteads, the program has predictably suffered a dismal track record.

Relatively few of the estimated 40,000 native Hawaiians have been placed on trust land. By 1987, the Hawaiian Homes Commission awarded a grand total of 5,803 homestead leases. Of this amount, 2,095 must wait in frustration for sufficient resources to develop the on- and off-site infrastructural improvements to support farming, ranching and residential lease awards made between 1985-87. In the 68 years of the program, the Hawaiian Homes Commission has awarded only 3,700 leases that have resulted in actual land settlement and homesteading. This amount translates into a mere 17.5% of the total acreage set aside for the program. Meanwhile, the waiting list grows, along with high hopes of returning to the land.

In contrast, the use of Hawaiian Home Lands by non-beneficiaries has been active. Nearly 100,000 acres of trust lands have been used for commercial, industrial, and public uses. This is three times the amount of land that is utilized by native Hawaiian beneficiaries, comprising a healthy share (61%) of the entire Hawaiian Home land inventory. The reason for this is the lack of appropriate capital for the development of infrastructure and other land improvement needs. However, upon closer inspection, we find that substantial revenue generation has not occurred. Sixty-one percent of the land base has generated $1,725,210 in revenues (through non-beneficiary use) which averages out to less than $18 per acre per year. Furthermore, virtually all of these revenues go to the Department of Hawaiian Home Lands to pay for adminstrative costs, rather than for direct beneficiary assistance, infrastructure development, and homestead improvements.

There is common recognition of the problems that plague the Hawaiian Home Lands trust and many studies, plans and recommendations have been offerred. The bottom line is that rehabilitation, homesteading, and the basic objective of returning Hawaiians to their land base has not occurred.

EXHIBIT A

THE HAWAIIAN HOMES COMMISSION ACT

On July 9, 1921, the U.S. Congress passed the Hawaiian Homes Commission Act of 1920 (HHCA). The HHCA set aside approximately 200,000 of the 1.7 million acres of government lands for homesteading by native Hawaiians. These government lands had been previously "ceded" by the Republic of Hawaii to the U.S. at the time of annexation.

Congress restricted eligibility for the program to native Hawaiians, defined as those of 50% or more Hawaiian blood. The Act authorizes the awarding of 99-year leases to native Hawaiians, at a dollar a year, for residential, pastoral and agricultural lots. It also provided for the provision of services to assist beneficiaries with the establishment of these homesteads.

Purpose of the Act. It appears that the intent of Congress was to promote the rehabilitation of Hawaiians. This subpopulation was seriously declining due to disease, dislocation and the loss of land stemming from the unprecedented concentration of land in Western hands following the creation of private real property rights in the mid-1800's and the overthrow of the Hawaiian nation in 1893.

However, the terms of the act revealed that many of its supporters harbored other ulterior motives. Large sugar interests in Hawaii were bent on preventing the 26,000 acres of prime agricultural lands then under lease from the Territory to sugar and ranching interests, but due to expire in the 1920's from becoming homesteads for the general populace.

Accordingly, the HHCA also was the vehicle that allowed the continuation of those "sugar leases" by exempting those lands from homesteading. Simultaneously, it designated generally arid lands in the public land inventory, i.e., those lands with poor soils, remote locations, low rainfall or without irrigation water nearby, for homesteading by native Hawaiians.

The Trust Duty. Upon passage of the HHCA in 1921, the United States government initially served as the sole trustee of Hawaiian Homes Lands for the benefit of native Hawaiian beneficiaries. However, at the time of Hawaii's admission into the Union, the U.S. transferred a portion of its trust obligations to the new State of Hawaii as a condition of statehood, under a compact that was incorporated into the new state constitution.

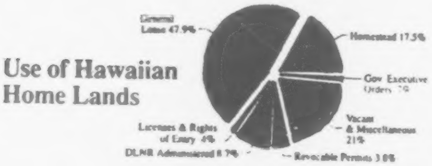
Nevertheless, the federal government retains oversight responsibility. For example, the U.S. must approve any amendments to the Act, enacted by the state legislature, which may diminish the benefits of the program to its beneficiaries. The Secretary of the Interior must also approve any land exchanges involving Hawaiian Home Lands. Finally, the United States may bring suit if the state breaches its trust responsibilities to native Hawaiians. However, the U.S. has never brought a breach of trust suit against the State. (The U.S. unsuccessfully attempted to intervene as a party in the ongoing Aki v. Beamer lawsuit, involving the use of Hawaiian Home lands by the County of Kauai.)

This trust responsibility has been analogized to that of a guardian toward a ward. This responsibility is of the highest order and is judged according to the standards set for trustees of private trusts.

The trust duties exercised under the Hawaiian Home lands program must be judged under the most exacting fiduciary standards. These duties include: 1) the obligation to administer the trust solely in the interest of the beneficiary, and 2) the use of reasonable skill and care to make trust property productive.

Principal Problems. With neither sufficient natural resources to sustain agricultural or pastoral activities on these lands, nor the financial commitment by the federal and state governments to aggressively place native Hawaiians on homesteads, the program has predictably languished under the weight of these obstacles. Accordingly, its track record has been dismal.

Relatively few of the estimated 40,000 native Hawaiians have been placed on trust land. By 1987, the HHC awarded a grand total of 5,803 homestead leases. Of this amount, 2,095 must wait in frustration for sufficient resources to develop the on- and off-site infrastructural improvements to support unimproved farming, ranching and residential lease awards which were made between 1985-87. As such, in the 68 years of the program, the HHC has awarded only 3,700 leaseholds on which beneficiaries have actually settled. These native Hawaiians occupy at most 32,713 acres, or 17.5%, of the 187,413 acres set aside for the program.



In contrast, there are over 17,000 native Hawaiians on the waiting list for leaseholds throughout the state.

Simultaneously, non-beneficiaries or other entities have been able to use 97,961 acres of trust lands for a variety of commercial, industrial, and public uses. The lands being used by non-beneficiaries is triple the total acreage being used by beneficiaries and makes up 61% of the entire Hawaiian home land inventory. The $1,725,210 in revenues generated by these dispositions average out to less than $18 per acre per year. Virtually all of these revenues were going to the DHHL to pay for administrative costs, rather than for programs.

Congress explicitly precluded the Governor from disposing Hawaiian Home lands by executive order or proclamation. Nevertheless, during the 68-year history of the program, the Governor's office has illegally transferred over 33,000 acres of Hawaiian home lands for use by other agencies and departments under executive orders and proclamations.

Public agencies used these lands for parks, airports, schools, and forests reserves. None of these transfers were authorized by the HHCA. Virtually all of these transfers resulted in no compensation to the DHHL for the decades of illegal use.

Reform. Administrators have only recently given serious scrutiny to the fundamental problems that have precluded the native Hawaiian beneficiaries occupying Hawaiian Home Lands. In recognition of these problems, a 1978 Constitutional amendment was passed which required the Legislature to adequately fund the program costs of the DHHL from the general revenues of the state. (Article XII, Section 1, Hawaii State Constitution.)

Despite this constitutional provision, neither the state or federal governments has provided sufficient public financing to make full productive use of the trust lands. Thus, the department has been unable to install the roads, sewer lines, irrigation systems, and utilities that would support the farming and ranching activities originally envisioned for the program.

On July 14, 1982, the Secretary of Interior and the Governor of the State of Hawaii jointly convened a Federal-State Task Force on the Hawaiian Homes Commission Act to make recommendations for improving the program. In August 1983, that task force issued a comprehensive report of the nature and scope of problems facing the HHC and made positive recommendations for actions to correct these problems, including a proposal to accelerate land awards to beneficiaries. The state has not implemented all those recommendations for action.

In 1987, for the first time, the Legislature appropriated funds for the administrative budget of the department. It also appropriated $22.7 million for infrastructural improvements and planning. However, this latter amount is only sufficient to fund the infrastructural improvements for 480 unimproved lots previously awarded and to finance the planning for improvement of another 680 lots. The department estimates that it would take half a billion dollars or more to finance the necessary infrastructure to support the remaining lots needed to satisfy the existing demand for awards.

In 1988, the legislature also enacted "right to sue" legislation, explicitly authorizing state courts, for the first time, to consider limited damage claims of native Hawaiians who suffer from trust breaches under the Hawaiian Homes program. It supplements existing judicial remedies available to correct breaches of trust committed by the department. However, this legislation is prospective and only allows for the preparation of a legislative plan to deal with past injuries to beneficiaries of the Hawaiian Homes program. The Governor is allowed to present this plan for legislative approval by 1991.

EXHIBIT B

THE CEDED LANDS TRUST

I. History of the Trust

When Hawaii was annexed in 1898, the Republic of Hawaii ceded approximately 1.75 million acres of Crown and Government lands to the United States. The Joint Resolution annexing Hawaii stated that existing United States' laws on public lands would not be applied to Hawaii's lands but "Congress shall enact special laws for their management and disposition." Another part of the Joint Resolution provided that the revenues and proceeds from the lands would be used "solely for the benefit of the inhabitants of the Hawaiian Islands for educational and other public purposes."

In 1900, Hawaii's Organic Act established the territorial government and provided specific laws for administering the ceded lands. §91 of the Organic Act stated that the ceded lands would remain in possession, use and control of the Territory "until otherwise provided for by Congress, or taken for the uses and purposes of the United States by direction of the President or of the governor of Hawaii." §73 of the Organic Act provided that the proceeds from the Territory's sale, lease, or other disposition of these ceded lands should be used "for the benefit of the inhabitants of the Territory of Hawaii as are consistent with the Joint Resolution of Annexation."

Thus, in the period between annexation and statehood, although the legal title to ceded lands was held by the United States, the Territory of Hawaii had administrative control and use of the lands. Moreover, funds received from the lands were used for the benefit of Hawaii's people. While the Republic had ceded absolute title of the Crown and Government lands to the United States, both the Joint Resolution of Annexation and the Organic Act recognized that these lands were impressed with a special trust for Hawaii's people.

However, the Organic Act allowed the federal government to "set aside" lands for use by the United States. Other lands, while not formally "set aside", were used by the United States under permits, licenses, or by permission from the Territory.

In 1959, Hawaii became a state and assumed the role of trustee for the former Crown and Government lands. §5 of the Admission Act is the key to understanding Hawaii's ceded lands and the state's responsibilities regarding those lands. §5(a) names the State as successor in title to the lands and properties held by the territory. §5(b) of the Act generally gives to the new State title to all the "public lands and other public property," and to all Hawaiian Homelands, held by the United States. However, certain categories of lands were excepted.

§5(g) defines public lands and other public property as the "lands and properties that were ceded to the United States by the Republic of Hawaii under the joint resolution of annexation ... or that have been acquired in exchange for lands or properties so ceded."

§5(c) of the Admission Act allowed the federal government to retain lands that had been set aside for federal use by an act of Congress, executive order, presidential proclamation, or gubernatorial proclamation.

§5(d) allowed the federal government to also set aside, within five years, any ceded lands it was using under permit, license, or permission of the territory immediately prior to statehood. Once set aside, those lands also would remain the property of the United States.

However, §5(e) provided that land and property reported as unnecessary for federal needs "shall be conveyed freely to the State of Hawaii." This provision set a five-year deadline; after August 21, 1964, five years from the date Hawaii formally entered the union, any lands retained by the federal agencies would remain federal property.

State officials had high hopes for return of substantial portions of federally held lands, but only 595 of the 287,078 acres set aside by the federal government were returned. Furthermore, the federal government set aside an additional 87,236 acres under the provisions of §5(d).

Objections were raised to the five-year deadline set on the return of lands under federal use. Hawaii's leaders contended that Hawaii had a unique claim on these lands since they were originally Government and Crown lands and were held in trust for the people of Hawaii. As a result, on December 23, 1963, Congress passed Public Law 88-233, which abolished the five year deadline and extended the possibility of the federal government's returning §§ 5(c) and 5(d) ceded lands to the State. However, all lands which had been set aside for national parks (approximately 227,972 acres) became the fee simple property of the federal government. Thus, under the provisions of P. L. 88-233, approximately 145,746 acres (58,510 acres of §5(c) lands and 87,236 acres of §5(d) lands) became eligible for return to the State. Since 1964, only 1,906 acres have been returned by the federal government.

§5 of the Admission Act is also the key to understanding the state's duties with regard to ceded lands. §5(f) of the Act provides that these public lands and the income and proceeds derived from them are to be held by the state as a public trust "for the support of the public schools and other public educational institutions, for the betterment of the conditions of native Hawaiians, as defined in the Hawaiian Homes Commission Act of 1920, as amended, for the development of farm and home ownership on as widespread a basis as possible, for the making of public improvements, and for the provision of lands for public use." §5(f) also provides that the use of the ceded lands, their proceeds and income for any other purposes "shall constitute a breach of trust for which suit may be brought by the United States."

II. State Responsibility for the Trust

Since statehood, the Department of Land and Natural Resources (DLNR) has been charged with the administration of all public lands. While the vast majority of state lands are ceded lands, it does hold other lands through purchase, gift or condemnation that are not ceded lands. Moreover, lands conveyed to the State as a result of §5(a) of the Admission Act are not subject to the §5(f) trust. Thus, the State, in carrying out the trust responsibility set forth in §5(f), must keep an accurate inventory of trust and non-trust lands and separate the proceeds and income received from trust and non-trust lands. However, a 1979 Audit of the DLNR indicated that the DLNR had failed to properly dispose of the revenue and income from the trust lands and to keep an accurate inventory of ceded lands.

Until 1978, little attention had been focused on the trust language of §5(f) of the Admission Act. At the 1978 Constitutional Convention, however, members of the Hawaiian Affairs Committee sought to implement the Admission Act's trust language relative to native Hawaiians. As a result, three new sections were added to the Constitution.

The first section specified that the lands granted to the state by §5(b) of the Admission Act (with the exception of Hawaiian Homelands) were to be held by the state as a public trust for native Hawaiians and the general public. The second section established an Office of Hawaiian Affairs (OHA), to be governed by an nine-member elected board of trustees, which would hold title to all real or personal property set aside or conveyed to it as a trust for native Hawaiians and Hawaiians. A final section set forth the powers of the board of trustees and made clear that OHA was to hold in trust a pro rata portion of the income and proceeds derived from lands granted to the state in §5(b) of the Admission Act. OHA's pro rata share was set at twenty percent by the state legislature.

After the 1978 constitutional amendments and the disclosures in the 1979 Audit, DLNR began to compile an inventory of all public lands for which it is accountable. By September, 1981, DLNR had done its initial inventory, listing approximately 1,271,652 acres. The inventory was not complete and in 1982, the legislature directed the Office of the Legislative Auditor to complete the inventory and study the legal issues relating to revenues from the ceded lands. The Legislative Auditor's Final Report, issued in December 1986, detailed the numerous problems and survey and title search expenses which would be involved in completing an accurate and comprehensive inventory. The Report recommended that such work be done only for those lands which generate considerable revenues or whose land title history is complex. Finally, the Report recommended that the ceded versus non-ceded lands distinction be abolished and that all public lands, including §5(a) lands, be held in the public trust.

III. Current Issues

While it is apparent that the 1978 constitutional amendments were meant to assure that the §5(f) trust provision relative to native Hawaiians would be carried out, numerous questions have arisen regarding what lands are in the trust res (trust property) and what constitutes income. The answers to these questions greatly impact on the funds OHA receives for native Hawaiians.

A. The Trust Res

The 1978 constitutional amendment only dealt with lands mentioned in §5(b) of the Admission Act. It is clear then that OHA must receive a pro rata share of the income and proceeds derived from §5(b) lands.

However, §5(f) of the Admission Act includes within its trust provisions not only §5(b) lands but also public lands conveyed to the State under §5(e). Moreover, P.L. 88-233 provides that any lands, property, improvements, and proceeds conveyed to the State under its terms also shall be considered a part of the §5(f) trust. Thus, while the constitution makes no specific reference to §5(e) or P.L. 88-233 lands, a strong argument can be made that the constitutional provisions should be interpreted to include them. Indeed, the legislature in enacting HRS §10-3, the statute implementing the constitutional amendments include §5(e) lands along with §5(b) lands as part of the public trust lands from which OHA receives income.

The state, while conceding that OHA is entitled to twenty per cent of the revenues derived from §5(e) lands, has consistently maintained that OHA is not entitled to any revenues derived from P.L. 88-233 lands. However, P.L. 88-233 merely acts as an amendment to §5(e) of the Admission Act, abolishing the timelimit for return of federally controlled lands. Since §5(e) lands have been included in the trust res, it seems obvious that P.L. 88-233 lands should also be included.

While OHA has received modest revenues from the trust lands under the jurisdiction of the DLNR, it has not received any funds from other government agencies who use or administer trust lands. Many of the state's lands with the highest potential for development--those adjoining harbors and airports, for example--have been set aside to other agencies, principally the Department of Transportation (DOT), for nominal fees or for no money at all. The DOT in turn develops the land and substantial revenues are earned from concessions and other uses of the lands. Such revenues have not been paid into the trust fund. A 1983 Attorney General's opinion upheld the practice, reasoning that since HRS §10-3 defines the public land trust as "all proceeds and income from the sale, lease, or other disposition of lands" conveyed to the State under §§ 5(b) and 5(e) of the Admission Act and transfers of public lands to governmental agencies for public uses are neither sales, leases, nor dispositions of public lands, OHA would not be entitled to a share of the revenues generated by such trust lands. However, the definition contained in HRS §10-3 is narrower than that contained in the Admission Act. §5(f) specifies not only the proceeds from the sale, lease or other disposition of the lands, but also the lands and income therefrom as being within the trust. As the Legislative Auditor's Final Report points out, it is doubtful that the legislature intended to limit OHA's entitlement to funds generated by sales, leases or other dispositions since the constitutional amendments provide for OHA sharing in the trust, including the income generated by trust lands, established in the Admission Act.

It has also been argued that lands acquired by the state under §5(a) of the Admission Act should be included in the trust res. For the most part, these lands were ceded lands which were turned over to the Territory prior to statehood. While not specifically mentioned in the §5(f) trust, including §5(a) lands in the trust res would be consistent with the principle that historically all public lands have been considered trust property. Moreover, as the Legislative Auditor's Final Report notes, the inclusion of §5(a) lands would also ease the administration of the trust and there would be no need for an accurate inventory to distinguish between trust lands and non-trust lands.

B. Trust Income

Trust lands are used in a variety of ways. Some trust lands are sold, some are leased and some trust lands house governmental offices from which no or minimal income is derived. On other trust lands, however, government and private businesses may generate substantial revenues. It is clear that OHA is entitled to share in the proceeds from the sale or lease of trust lands. It is equally obvious that OHA will not receive income where trust lands house government offices and no income is derived.

However, difficult problems arise when trust lands are used to operate government enterprises, such as harbors and airports, which do generate income; or when private business operates public facilities on trust lands; or when government allows privately-operated concessions within government office buildings or public facilities. It is not clear whether revenues derived from these activities constitute "income" subject to OHA's pro rata share. Indeed, if they do constitute income, then should OHA be entitled to receive its twenty per cent share from the gross or net income derived from these operations? Neither the Admission Act nor relevant statutes state whether "income" means gross or net income. The Legislative Auditor's Final Report points out that defining "income" as gross income could adversely affect important governmental programs.

Except where expressly established for the purpose of raising revenues for the State or county, a public enterprise generally does not make money but merely receives enough revenue to pay the cost of its operation and maintenance. However, many public enterprises do not even break even and must be subsidized from the general fund of the State or the county. If OHA were to receive a portion of the gross income of these enterprises, either fees to the public would have to be raised or additional subsidies would need to be made. Defining "income" as net income would shield income derived from those government operations which are not intended to raise revenue, but are more in the nature of government services. If a public enterprise is established in order to raise revenues, the net income justifiably should be subject to OHA's twenty per cent share.

The gross vs. net income issue is of great importance in the case of the state's harbors and airports. As noted earlier, an Attorney General's opinion held that transfers to the DOT are not "dispositions" and are not subject to OHA's twenty per cent share. However, another reason for the opinion was the fact that the airports and harbors are constructed by floating revenue bonds and the revenues from airports and harbors are used to secure these bonds. The bonds themselves set the order in which payments are to be made out of airport and harbor revenues. Usually principal and interest are paid first, with cost for operations, maintenance and repair of the airport properties second. Under this system, all revenues go into the operation and maintenance of the airport and harbor system so, it has been argued, no net income is realized. Moreover, there is a further problem in that the bond covenants require some excess of revenues over costs. Consequently, even if there are "extra" revenues after paying for operation and maintenance, the state has argued that such additional revenues cannot be reached by OHA without breaching the bond covenants. This would violate the constitutional provision prohibiting impairment of contracts.

Finally, another difficult issue arises when public facilities are located on both trust and non-trust lands. How should revenues from such a facility be categorized? For instance, most revenues from Honolulu International Airport are generated from concessions located on non-trust lands. Yet, were it not for the use of trust lands as landing strips, no concessions could exist and no revenues would be generated. Several solutions have been suggested, including attributing to the trust only the revenues that are actually generated on trust lands or taking the total acreage of the facility and attributing revenues in the same proportion that trust lands bear to the total acreage.

C. Recent Litigation

These problems identifying the trust *res* and income have prevented OHA from realizing its full potential income. Efforts by the Trustees to resolve these issues through the courts have also been frustrated.

The Hawaii Supreme Court, in *Trustees of the Office of Hawaiian Affairs v. Yamasaki*, refused to decide important questions on OHA's entitlements, basing its ruling on the doctrine of "political question". This case involved two separate suits filed by the Trustees which were consolidated for appeal. The first suit sought twenty per cent of the damages received by the State for the illegal mining of sand from Papohaku Beach on Molokai. The second suit sought OHA's share of the income and proceeds from sales, leases, or other disposition of lands surrounding harbors on all the major islands, of land on Sand Island, of land on which Honolulu International Airport is located, and of land on which the Aloha Tower complex stands. The court appeared to be highly influenced by the bond covenants and commitments for the revenues from the harbors and airports. Moreover, the court believed that when OHA's share of the trust was fixed at twenty per cent by the state legislature, the trust *res* was undetermined. The court found evidence of this in the act authorizing the Legislative Auditor to complete the inventory of ceded lands and study the use and distribution of revenues from ceded lands. The court also noted that the Legislative Auditor's Final Report of December 1986 stated that the uncertainties surrounding the trust and funds derived therefrom could not be resolved without further legislative action. Thus, the court, following the lead of the Legislative Auditor, concluded that the issues were better left for resolution by the legislature than the judiciary.

In October 1987, the U.S. Supreme Court declined to review the *Yamasaki* case. Since then, OHA and the state Administration have been negotiating to resolve these issues.

PROTECT
KAHO'OLAWE
'OHANA

EXHIBIT C

September 8, 1987

MEMORANDUM

TO: Senator Daniel Inouye
Chairperson, Senate Select Committee on Indian Affairs

FROM: Davianna McGregor and Keoni Fairbanks
Protect Kaho'olawe 'Ohana

RE: ENDING MILITARY USE AND CONTROL OF KAHO'OLAWE

This memorandum is being sent in follow up to our presentation and discussion with you on August 31, 1987 at your Honolulu office together with the Na'au Pono group. It provides an update on joint use of Kaho'olawe by the U.S. Navy and the Protect Kaho'olawe 'Ohana; a rationale for ending military use and control of the island; and suggested action to achieve that.

The outline is as follows:

- A. Significance of the Island
- B. The Consent Decree
  - 1. Military Operations
  - 2. Cultural Resource Management
  - 3. Land Management Plan
  - 4. Ocean Management
  - 5. Religious Access
  - 6. Summary
- C. Military Need For The Island Is Questionable
- D. Suggested Action To End Military Control Of The Island
- E. Jurisdiction After The Island's Return

A. SIGNIFICANCE OF THE ISLAND

Kaho'olawe - Kohemalamalama O Kanaloa continues to be a focus for Native Hawaiian political action to end military use and control of local island resources. More significantly however, over the past eleven years since we of the Protect Kaho'olawe 'Ohana have assumed stewardship of the island, it has become a center for the perpetuation of Native Hawaiian spiritual beliefs and practices. As Native Hawaiians we believe that all 'aina is sacred and should not be abused or desecrated. Our genealogies trace our origin to the various life forces of nature - Papa, the earth;

Wakea the sky; Kane life sustaining waters of our springs and streams; Lono our makahiki rains; Kanaloa the deep foundation of the earth and ocean; Ku, the luxuriant growth of the forest; Pele our volcano - and their multitude of body forms in our native plants fish and birds. We honor and respect our 'aina in chants, poems and myths. We worship our akua who are the life forces of nature with ho'okupu or offerings. Our ancestors lovingly named the various features of our aina as they named their children. By attuning ourselves to the rythm and pattern of nature in planting, fishing and healing, we provide for the basic needs of our families. The 'aina is the source of our mana.

Each of our islands have unique significance and characteristics. Each are special, significant and sacred for different reasons.

Kohemalamalama O Kanaloa is sacred to our god Kanaloa. Moa Ula with its commanding view of Hawai'i's channels was a traditional center for training in navigation and astronomical observation. Lae O Kealaikahiki(Pathway to Tahiti Point) was a launching point for Hawaiian voyages to Tahiti. The second largest adze quarry in all the islands is located at Pu'u Moiwi on Kaho'olawe. The island featured prominently in traditional Hawaiian fishing as is evident in the numerous fishing ko'a (shrines) that stud the island and the major fishing heiau at Kamohio and Honokanai'a.

Modern-day assertions by Western-trained scholars that the island is not sacred are simply false. Those detractors who refer to use of the island as a penal colony by the Hawaiian monarchy from 1826 through 1853 interpret this outside of the historical context of the era. Use of the island as a penal colony must take into account how Ka'ahumanu who was the kuhina nui under whom this use began, was also instrumental in the abolition of the Kapu and the Native Hawaiian religion. She, therefore did not acknowledge traditional Hawaiian kapu practices on Kaho'olawe or anywhere else in Hawai'i. Many of those banished to Kaho'olawe were guilty of political rather than criminal offenses such as choosing to practice the catholic religion rather than the protestant religion, or chiefs that posed a political threat to the ruling hierarchy.

This is an example of one misconception about the cultural history of the island which must be corrected in a scholarly ethnography of Kaho'olawe that also includes oral tradition as a valid original source of information.

B. THE CONSENT DECREE

In 1976 the Protect Kaho'olawe 'Ohana filed a suit against the Navy for violation of federal laws pertaining to historic preservation and environmental protection and invoking the Native American Religious Freedom Act.

Prior to a final court ruling the Protect Kaho'olawe 'Ohana signed a consent decree with the Navy under which the Navy was required to comply with the federal laws they they were previously not complying with. Regarding military operations on the island the Navy is required to limit the expenditure of live ordnance to 25% of the total expended within one year; abide by noise level standards; and adopt standard operating procedures which would protect the various archaeological sites and features on Kaho'olawe. The Navy is required to develop a cultural resource management plan to provide for preservation of the invaluable historic sites on the island and for the island as a whole which is a national historic district. The Navy is required to implement a land management plan which would conserve the soil; reforest the island; eliminate the goats; and clear one-third of the island of ordnance. The Navy is also required by the court to assure proper ocean management by restricting ordnance falling into the waters surrounding Kaho'olawe.

It was only after the 'Ohana took the Navy to court that it reluctantly began the site survey and revegetation programs that it now misrepresents as its own initiative.

The 'Ohana is acknowledged to be the steward of the island and in that capacity responsible to monitor the Navy's compliance to the Consent Decree. The 'Ohana is also provided access to the island during ten days of ten months of each year for religious, educational and scientific purposes. Negotiation sessions are held with the Navy every six months to review the Navy's compliance with the Consent Decree and to arrange accesses to Kaho'olawe. We have patiently abided by the terms of the Consent Decree and approached the working relationship with the Navy in good faith.

We have found the Navy to be cooperative up to the point that we do not begin to assume fuller responsibility as stewards of the island or fully exercise our rights to practice our Native Hawaiian religion. The relationship is still basically unequal with the Navy treating us as wards rather than as stewards of Kaho'olawe.

We feel that over the past seven years we have maximized the capacity of the Consent Decree to protect the island. At this stage the Consent Decree cannot provide for the stabilization and preservation of the invaluable historic and cultural sites of the island for our children and our children's children over the next seven generations. It cannot afford us the ability to fully practice our Native Hawaiian religion. We find that we have reached a point where we must go beyond the Consent Decree to protect Kaho'olawe and practice Aloha 'Aina. With this in mind we share the following update on the implementation of the Consent Decree. Short of ending military control of the island we also point out areas where you could assist us in dealing with the Navy.

1. Military Operations

The Navy readily provides us with detailed statistics on rainfall; goats killed; percentage of live to inert ordnance used on the island; numbers of persons who have gone on access to Kaho'olawe; and amount of hours that the island is used by each branch of the U.S. armed services and any foreign government, which since 1984 has only been Canada.

However, the really critical data regarding the hit and miss statistics for training on the island is not available to us. This makes it extremely difficult to determine how the archaeological sites are being protected from ordnance during training exercises. We have also requested the Standing Operating Procedures for protection of the archaeological sites that the Navy is required to utilize under the terms of the Consent Decree. These have not been provided as the Navy informs us that the briefings are given verbally. Without such information we cannot verify that the Navy is taking adequate measures to protect the national historic district of Kaho'olawe.

The recent incident in August where ten cluster bombs were dropped directly onto five archaeological sites and near four others exposes the problem that the Navy has with protecting and monitoring the impact of the training exercises on the archaeological sites on Kaho'olawe. In that case the dropping of the bombs on the archaeological sites was discovered two to three weeks after they had been dropped and while the Kaho'olawe Project Officer was conducting a goat hunt. The Navy could not explain which armed service was responsible for dropping the bombs; why it was dropped one mile away from the nearest air or ground target; why the bombs didn't explode; and why a report had not been filed. We still await the written report of the findings of the investigation to receive this information. We are also sending a letter to Admiral Reimann, Commander Naval Base Pearl Harbor again requesting hit/miss statistics and the Navy's Standard Operating Procedures. Your assistance in having the Navy provide us with this information would be helpful.

We are concerned with the training scenarios used by the U.S. marines when they conduct training exercises on the island. We have requested that they discontinue depicting the island as "enemy" territory or as American territory controlled by "enemy" or terroristic forces such as was used in Beachthunder '85. In those exercises an "Alliance for an Independent Kaho'olawe" supposedly took over the island, held American citizens hostage and receive assistance from a communist group on Kaua'i. It is one thing to use Kaho'olawe for target practice and another matter altogether use a scenario depicting the island as territory controlled by "local insurgents." This casts a dehumanizing stereotype upon the island and upon the people associated with it - the Protect Kaho'olawe 'Ohana and others. Exercises should be devoid of ideological trappings that conjure up negative images of the island, the 'Ohana and local people.

The percentage of live ordnance to inert has decreased from 1982 to

1986. The total amount of ordnance expended by aircraft has decreased by 50 percent but the amount expended by ships has remained the same. The total number of hours scheduled for military use of Kaho'olawe has declined over 30% from 2.2 million hours in 1983 to 1.5 million hours in 1986.

The noise level standards and policies in the decree are too weak to protect the residents of Kihei, Wailea, Kula or East Moloka'i from noise disturbance. Residents there are frequently alarmed by the thunderous roar of artillery fire and the vibrations.

2. Cultural Resource Management

The Navy contracted a cultural assessment of Kaho'olawe which is laden with misinterpretations and distortions. Moreover it cannot be simply corrected as the basic analytical framework and theoretical premises were flawed. Rather than reject the report the Navy has opted to accept the report and append our critique and alternate assessment of the cultural significance of the national historic district of Kaho'olawe.

A multi-disciplinary excavation of Kaho'olawe under the overview of Paul Rosendahl has been completed. Previews of the reports presented at forums indicate that the various reports on soils, sites, plants and fauna contain valuable new information on the pre-contact history of Kaho'olawe that will radically alter the findings and theories of Navy archaeologist Rob Hommon. The reports document more widespread use of the island, higher population figures, earlier settlement dates and provide a more complete picture of the settlement and use of the island. Although the contract period has expired and the Navy has already paid for the reports the information has been witheld from us by the Navy until a final summary which was due two years ago is turned in.

To date the Navy has not developed a cultural resource management plan as required by the U.S. Advisory Council on Historic Preservation; the Hawai'i State Historic Preservation Officer under the Memorandum of Agreement with the Navy.

Day-by-day, month-by-month, and year-by-year the wind, the rain and military maneuvers are eroding the island and its valuable cultural resources are threatened with destruction. The cultural resource management plan must be developed as soon as possible and the 'Ohana must be an integral part of that process.

Our experience with the Navy in this regard over the past seven years has shown us that the Navy is only willing to make token efforts at site stabilization and preservation. Any serious management of the cultural resources of the national historic district of Kaho'olawe must begin with the ending of military shelling and training on the island.

3. Land Management Plan
One-third of the island has been cleared of ordnance and the frequently used trails and roads are safe.

The Navy has made recent improvement in their formerly token efforts to conserve the soil and reforest the island. They continue to use foreign rather than native plants, but have given logistical support to the Friends of Maui Botanical Garden who have succeeded in getting native plants to take root in a section of the island. The 'Ohana worked hard to initiate this cooperative effort and hopes that the Friends can expand the project if they get sufficient cooperation from the Navy in the watering of the plants.

The Navy also seems to be cooperating with us and the Department of Land and Natural Resources in a project to investigate and monitor the water resources on Kaho'olawe. Monies were appropriated for this project by the Hawai'i State Legislature through a bill written and successfully lobbied by the 'Ohana.

The goat population is significantly reduced. The Navy is making a major effort to eradicate them, but they have not yet reached that goal. Again this effort has come only after years of continuous pressure by the 'Ohana, and is using eradication strategies researched and presented by the 'Ohana.

The Navy's primary interest in the island is military training not soil conservation or reforestation. Our concern is that the Navy's efforts in conservation work are highly variable and dependent on the whim of the Kaho'olawe Project Officer. For the past three years there has been an excellent person in command, for the seven years previous to that the Project Officer blocked all conservation efforts. What will happen with the next imminent change?

4. Ocean Management
Shells are still falling short into the ocean. The Navy reports that one such incident occurred on June 6, 1986 during the RIMPAC exercises. In Spring 1986 a most significant natural navigational marker for fishermen, called Black Rock mysteriously disappeared. The fishermen of Maui expressed grave concern over its disappearance as it was extremely important as a marker of the shoals and sand bars near the island as they navigate through the channel between Lana'i and Kaho'olawe. The disappearance is being investigated.

5. Religious Freedom/Access for Religious Practices
During the past six years, from October through January we go to Kaho'olawe for religious purposes to honor Lono during the Makahiki season and ask him to come to the island in the form of rain to rejuvenate the island. While the Navy is officially tolerant of the practice of Hawaiian religion on the island and has in the past provided logistical support to us in the conduct of our ceremonies, the continued

presence of the Navy in the area during our ceremonies is insidiously chauvinistic, insulting and distracting.

As long as the Navy insists on being in the Hakioawa area while the 'Ohana is there, incidents in which either the 'Ohana or the Naval personnel feel insulted, angry or frustrated will continue to occur. This is the case, not because we want them to happen or because we provoke them, but because we will continue to unwittingly violate each other's conceptions of acceptable behavior given the completely different cultural contexts that we have been raised and live within.

1. The traditional practice of our Native Hawaiian religion and the celebration of ceremonial rituals requires discipline and maximum concentration. The Navy's presence disturbs the Concentration and therefore inhibits and interferes with sacred religious offerings and petitions to Lono during the Makahiki Season. Insistence in accompanying the procession across the island interferes with that ceremony. No other Native American group is so closely scrutinized and monitored in their religious observances. We protest the infringement upon our First Amendment right to freely practice our religion.
2. We see no reason why we cannot remain in the Hakioawa area by ourselves since that area is sufficiently cleared of ordnance.
3. We have proven to be responsible for the safety and health of over 2,000 access participants including kupuna (elders) and Kamali'i (infants) over the past six years.

This proposal is being made to protect and guarantee the 'Ohana our first amendment right to freely practice our religion. It was however developed during the negotiations discussion to address Navy safety and liability concerns.

For the Makahiki Season accesses in November and January the procedure would be as follows :

1. Navy EOD personnel would clear the road from the top of Lua Makika to the Navy installation at "Smuggler's Cove, and the coastline from this point to Keanakeiki beach the day before the 'Ohana arrives on island.
2. The COMNAVBASE representatives should meet the 'Ohana upon our arrival at Hakioawa, collect the waiver forms, provide a briefing on safety and dispatch a team of EOD to go out with a team of 'Ohana members to clear and mark the trail that the Lono procession will use between the 'Ohana camp and the road. When the 'Ohana/EOD team returns the Navy personnel can leave Hakioawa.
3. During the period of access the COMNAVBASE representative can camp at Picnic Grove or simply stay at the barracks at "Smugglers" and return to Hakioawa on the evening prior to our departure.

We believe that this proposal complies with the section V.B.1. of the Consent Decree which states that, "Access will be subject to conditions imposed by Commander THIRD Fleet necessary and appropriate to ensure the safety of the access participants." This proposal provides necessary measures to assure the safety of the access participants by clearing and marking the paths walked upon during our procession. It is a more efficient way to make sure that we would not encounter unexploded ordnance than the present procedure of simply walking along side. It provides for appropriate measures in that the proposed procedure would allow us to practice our religion free of interference and distraction from Navy personnel.

This proposal also implements the stated purpose of the Navy's "Clearance of Surface Ordnance from Designated Areas of Kaho'olawe" plan as set forth in Appendix C to the Consent Decree and as mandated by Section I.D. of the Decree: "The purpose of this clearance operation is to permit expanded access to portions of the island for religious/cultural visitations with reduced supervision by Naval personnel."

With regards to your concern about people wandering off the path, and without going into detail about the specifics of our religious practices, we can assure you that the nature of this religious procession is such that all participants are focussed on one purpose and do not stray off the path! We also assure that any military personnel or non-participants are a distraction and disruption to our ceremonies. This is not a regular educational access with first timers, but a religious observance held only once or twice a year. All the participants have been to the island before and are not there to play around. We believe that this special request for a special occasion is not an unreasonable one. We request your support to allow the unfettered undistracted fulfillment of ceremonies important to us.

We would appreciate, Senator Inouye, your endorsement of our proposal to Admiral Reimann in the interest of recognizing our first amendment right to practice our Native Hawaiian religion.

6. Summary

Short of ending military control of Kaho'olawe, we would appreciate your assistance in the following matters:

(a) Having the Navy provide the 'Ohana with hit/miss statistics for military exercises on the island.
(b) Having the Navy provide the 'Ohana with written Standard Operating Procedures for use of the island by the various military forces.
(c) Requiring the U.S. Marines to stop using training scenarios that conjure negative images of the island, the 'Ohana and local people. They can use neutral labels such as colors to distinguish the different forces as the Navy now does.

(d) Requesting that the Rosendahl Report be completed and made public.
(e) Requesting that work on the Cultural Resource Management Plan begin immediately in conjunction with the 'Ohana.
(f) Helping the 'Ohana identify sources of funding and federal governmental assistance for carrying out soil conservation and reforestation projects on the island.
(g) Requesting information on the disappearance of the navigational marker called Black Rock.
(h) Endorsing our proposal to Admiral Reimann concerning our first amendment right to freely practice our Native Hawaiian religion on the island.

C. MILITARY NEED FOR THE ISLAND IS QUESTIONABLE

In order for the executive order that set the island aside to be revoked we must prove that the Navy no longer needs Kaho'olawe. The following outlines how the Navy does not need the island and how there are greater needs that override the Navy's need for the island.

1. The Navy doesn't need the island:
    a. They are using archaic WWII training techniques
    b. Perhaps they can more effectively computer simulate target practice
    c. They do not do coordinated land, sea, and air training on the island as it is too dangerous, therefore floating targets and other existing training areas may satisfy training needs.
    d. Ordnance clearance is possible with new technology developed in France.

2. Native Hawaiian land rights override the need for military training. The island is part of the ceded land trust which partially benefits Native Hawaiians. Bombing the island is a racist assault upon the Native Hawaiian people and culture.

3. Native Hawaiian custom and use rights especially related to religious practices override the need for military uses of the island.

4. Navy bombing threatens endangered species of plants and animal life. Laws protecting endangered species should be invoked.

5. Marine Protection Laws should be invoked over military need.

6. The entire island is a National Historic District and should be protected. National Historic Sites are in danger of destruction. National Historic District laws should be invoked.

7. Environmental protection laws should be invoked regarding noise, erosion, etc.
8. The bombing is very close to an expanding population at Kihei and is a nuisance.

9. The bombing is a desecration. It conflicts with our Hawaiian value of Aloha 'Aina.

10. Hawai'i should support peace in the world and but military training in preparation for U.S. intervention abroad will only contribute to the potential for wars of aggression.

11. The Maui County Plan projects peaceful cultural uses of Kaho'olawe.

D. SUGGESTED ACTION TO END MILITARY CONTROL OF THE ISLAND

The following outlines steps that can be taken to end military use and control of Kaho'olawe.

1. Ending Foreign Use of Kaho'olawe

(a) Write a letter to the Secretary of Navy to exclude foreign use of Kaho'olawe. (note: Canada is the only foreign country still shelling Kaho'olawe)
(b) Write a letter to Prime Minister Mulroney requesting that the Royal Canadian Navy stop using Kaho'olawe for their naval training exercises out of respect for the Native Hawaiian people.

2. Congressional Action Regarding the Executive Order

(a) Follow up meetings with Inouye's staff and the staff members of other Hawai'i Congressional delegates to concretize alternative strategies and timetable and to research the military's need for the island and suitable alternatives.
(b) Bill to be drafted and referred to appropriate committee
(c) Hearings should be held on the bill on as many islands as possible, but minimally on Maui, Moloka'i and Lana'i.

3. Objectives of the Congressional Hearings

(a) Maximum objective is to have Congress override the Executive Order.
(b) Minimally the Congressional Hearings should make Kaho'olawe an issue of national concern and draw the attention of the national parties and presidential candidates to make a platform commitment to rescind the executive order upon attaining the presidency.

(c) The Congressional Hearings should also arouse interest in pursuing other avenues to put pressure on the Navy to return the island such as restricting the Navy from spending money to train on Kaho'olawe; or enacting other legislation recognizing Native Hawaiian religious rights, or land rights or new environmental restrictions to restrict Navy use of the island even if they still control it.

4. Other Initiatives

Timetable and steps to get the local and national party conventions to draft a position on Kaho'olawe and for the delegates to work to get a firm commitment from the presidential candidate regarding Kaho'olawe.

E. JURISDICTION AFTER ISLAND'S RETURN

When military use and control of Kaho'olawe ends the question of use and jurisdiction of the island will arise. The following is the Protect Kaho'olawe 'Ohana's position on the use and jurisdiction of Kaho'olawe upon its return.

1. Use:
The island's future use is adequately outlined in the Maui County Plan which the 'Ohana participated in. The 'Ohana will be working in conjunction with the Navy on a comprehensive Cultural Resource Management Plan which will further develop the future uses of the island, including the rejuvenation of the natural resources of the island, ahupua'a by ahupua'a.

2. Jurisdiction:
Under the Executive Order the land automatically reverts to the State, however we feel that the Protect Kaho'olawe 'Ohana should continue to serve as the steward of the island and manage the island as a trust for Ka Lahui Hawai'i (Hawaiian Nation). National models like the Turtle Island Land Trust should be explored..

TESTIMONY OF EDWARD HALEALOHA AYAU
LAW STUDENT, UNIVERSITY OF COLORADO AT BOULDER
BEFORE THE
SENATE SELECT COMMITTEE ON INDIAN AFFAIRS
ON THE SUBJECT OF
RESTORATION OF HAWAIIAN SOVEREIGNTY AND LAND

AUGUST 26, 1988

KEONI AUDITORIUM, EAST WEST CENTER
UNIVERSITY OF HAWAI'I
HONOLULU, HAWAI'I

I. Introduction

Mr. Chairman, Governor Waihe'e, Kia `Aina Mili Trask, Ali'i Nui Kalokuokamaile Elua, Trustees of the Office of Hawaiian Affairs, Aunty Peggy Ha'o Ross, ka po'e Hawai'i, aloha kakou. My name is Edward Halealoha Ayau. I am a Hawaiian from Moloka'i, land of Hina and Lanikaula. I am a third year law student and co-President of the Native American Law Students at the University of Colorado. I am also a law clerk at the Native American Rights Fund.

As a Hawaiian I am deeply committed to two very mutual principles: first, the restoration of sovereignty for Hawaiians and second aloha `aina, love for this land. As we all know, both principles go hand in hand, as the Hawaiian embodies the timeless beauty of these islands. Regretfully, that very beauty was scarred by the events of 1893, whereby the Hawaiian sovereign government was wrongfully overthrown, and later in 1894 when the U.S. Foreign Relations Committee wrongfully issued their report condoning the actions of Minister Stevens and other extremists who aided in the overthrow.

It is said that a structure built on a faulty foundation will ultimately crumble. American authority in Hawai'i was wrongfully established, against the very will of Hawai'i's reigning sovereign. We all know this, that is why we are here. Hawaiians have since become consumed by a foreign power. As Malo put it, "big fish from the dark ocean will eat up small fish in the shallows." Principles of justice dictate that an equitable solution be found where an injustice exists, for surely a wrong is not made right simply due to the passage of time. It is in this breath that I wish to share my mana'o on the topic, "restoration of Hawaiian sovereignty and land." I cannot begin to emphasize the importance of the term "restoration," for as Kauikeaouli, Lili'uokalani and all Hawaiians who love this land believed, 'ea, the right to be self determined can never be permanently taken away; its very existence depended upon, and is provided by, the belief of those who held this ideal.

II. The 1843 Restoration of Hawaiian Sovereign Authority

Restoration of Hawaiian sovereign authority and land has happened once already. On February 10, 1843, Kamehameha III yielded the Kingdom of Hawai'i under protest to George Paulet, captain of a British man-o-war sent by Richard Thomas, commander of the British Pacific Fleet to guard British interests in Hawai'i. Kauikeaouli appealed to Queen Victoria.

On July 31, 1843, in a special ceremony, the 'ea, or sovereignty of Hawai'i was restored when Admiral Thomas declared the imposed cession of February 1843 to be "unacceptable," and Kamehameha III to be the "independent sovereign." Kamehameha III then led a parade to Kawaiha'o Church where he uttered the immortal words: "Ua mau ke 'ea o ka `aina i ka pono, " the life of the land is perpetuated in righteousness. News arrived from the U.S. of the formal recognition of the independence of Hawai'i by England and France. Thereafter, July 31 was celebrated as Ka La Ho'iho'i 'Ea, Restoration Day.

However, fifty years later Lili'uokalani was dethroned by U.S. citizens residing in the Hawaiian Kingdom, upon the urging of a U.S. Minister and use of the U.S. military. Like Kauikeaouli, Lili'uokalani also yielded under protest. Although England, in 1843, recognized its violation of international law and the rights of indigenous people, the U.S. has yet to formally acknowledge its 1893 "act of war," as President Cleveland called it, and to restore Hawaiian sovereign authority and land.

Since 1893, Hawaiians and non-Hawaiians have not fully embraced the notion that the life of the land was embodied in the concept of 'ea, sovereignty and was maintained through pono, rightness in its purest sense. It is in light of this rightness that England restored and formally recognized the 'ea, and ku`oko`a, independence of Ka Lahui Hawai'i. England took five short months to realize the truth. In 1983 the Majority Report of the

Native Hawaiians Study Commission ignored the truth. But, the truth speaks for itself: to know the truth is to finally become free.

III. The Current Existence of Hawaiian Sovereignty

One argument to be made for restoration of Hawaiian sovereignty and land is that the Hawaiian government had entered into numerous treaties and conventions with other nations, including Belgium, Denmark, France, the German Empire, England, Italy, Japan, The Netherlands, New South Wales, Portugal, Russia, Samoa, Spain, Sweden, Norway, Tahiti and the United States. (See, Treaties and Conventions Concluded Between the Hawaiian Kingdom and Other Powers Since 1825). In fact, the monarchy signed at least five treaties with the United States. (See, Treaties and Other International Agreements of the United States of America, Vol. 8). Implicitly recognized is the sovereign status of the Hawaiian government, since treaties are agreements between two sovereign entities. Although the U.S. has since assumed dominion over ka Lahui Hawai'i through an illegal overthrow, nonetheless, Chief Justice John Marshall in the early U.S. Supreme Court decisions Cherokee Nation v. Georgia, Worcester v. Georgia and Johnson v. McIntosh, made it clear that the United States still recognized the sovereign status of native governments it had defeated in battle as well as those governments which it assumed dominion over by peaceful means; subject of course to the plenary power of Congress. Hence today you have the existence of the Navajo, Hopi and Cherokee Nations, to name but a few.

Restoration of Hawaiian sovereign authority is by no means the answer to all the social, political and economic problems that plague Hawaiians. But it is the beginning to something we Hawaiians have known all along -- that as the first inhabitants of these islands, united under a single monarchy, we exhibited the attributes of nationhood. With an autonomous governmental structure independent of state influence, Hawaiians will finally be able to exact the level of control over their affairs that the Department of Hawaiian Home Lands and the Office of Hawaiian Affairs never and will never have; conflict of interest questions will always arise when a state authority, with responsibilities to all its citizens, has jurisdiction and the power of the purse over native people.

The time has come for the United States to fully embrace 'ea, the birthright of every Hawaiian. This is not a radical doctrine but rather a simple, legal recognition of the existence of, and honest desire for, local self-determination that is currently recognized in the Navajo Nation, Kootenay Reserve in Canada and thousands of other native communities around the world.

Restoration of Hawaiian sovereign authority and land will place responsibility where it ought to be -- with Hawaiians. Only Hawaiians can understand the problems that plague Hawaiians and Hawaiians must be the ones to solve them. Restoration of self-determination is but the first step.

There have been countless examples of the exercise of self-determination by local Hawaiians. Yet due to lack of formal recognition, reaction by state and local authorities was swift and often violent. For example, Hawaiians protested the eviction of George Santos and other tenants of Kalama Valley by the Bishop Estate and were arrested; residents of Hale Mohalu were evicted; Hawaiians protested the lack of rent payment for Hilo Airport located on 5(f) lands; eviction of residents of Sand Island; eviction of Hawaiians from Makua Valley; the deaths of George Helm and Kimo Mitchell protesting the bombing of Kaho'olawe; the eviction of the Brown `Ohana from Waimea Valley; the arrest and eviction of Hawaiians from Waimanalo Beach; and recently, the beating and jailing of the Kaawa `Ohana. Whether these Hawaiians knew it or not, they were making the strongest sovereign claim, because the authority upon which these events were based is Hawaiian sovereignty.

If the sovereignty of Hawaiians had never been stolen, these regretful events would have never occurred. But they did, and we Hawaiians live with the responsibility of never allowing such events to happen again. I asked Charles Wilkinson what it would take to unite Hawaiians and he responded with two simple words, "a crisis." In view of the countless events previously described, Hawaiians already live in constant crisis.

Hawaiian sovereignty is also exercised day to day in more intangible ways. In Ka'u Hawaiians fish for `opelu; at Makua, Hawaiians pick `opihi; at Aha`ino, Hanapi kane carves milo in the images of dreams, while Hanapi wahine picks limu for the evening meal; at Ke'anae Hawaiians huki kalo and work the lo'i; and when the Makali'i rise, Protect Kaho'olawe `Ohana members begin preparation for the upcoming makahiki season. Each of those personal and community acts is a profound expression of self-determination, of cultural individuality.

Broken down, restoration of Hawaiian sovereign authority and lands really stands for meaningful choices. The right to choose to remain a part of the larger society or to pursue a grassroots-lifestyle is a Hawaiians by birth. It is arrogant to think that only skills that allow a Hawaiian to hold a steady job are meritorious. Are we to look down upon those Hawaiians who live a subsistence lifestyle simply because their skills are not marketable? Certainly not. The skills they possess are used to feed their families. Basically, this is what it is all about.

IV. Conclusion

Lili'uokalani left us her legacy and present day Hawaiian leaders have inherited the historic responsibility of looking after the needs of the Hawaiian people. The sovereignty Lili'uokalani yielded under protest must be fully restored; only then will her spirit be put to rest and the life of the land again be perpetuated in righteousness. The Hawaiian islands will again be beautiful. Ua mau ke `ea o ka `aina i ka pono.

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Aug. 26, 1988

To: THE SENATE SELECT COMMITTEE ON INDIAN AFFAIRS

RE: The 1893 OVERTHROW OF THE HAWAIIAN MONARCHY

Mr. Inouye and Committee Members,

My name is Irene Kaiwahine Kaeo Niau Maynard. I was born on the island of Kauai, raised on the island of Oahu, reside at Kamaileunu St., Waianae.

I am happy to be here this Aug. 26, 1988 and I'm proud to be a descendant of Ka Lahui Hawaii.

We, the Native Hawaiian blood Quantum of our descendants, are the traditional rightful legal occupant, users of the land, water, sea, mineral, and all other resources as farmers, fisherman, hunters, manufacturers, miners, tradesman, professional residents, to nurture and premeated native Hawaiian people of the Hawaiian archipelago.

We the Native Hawaiians and our descendants inhabited, to occupied this archipelago, exercise our traditional religion, access rights since time in memorial to sustain, maintain, our culture, and primordial interest, under the interim government of Ka Lahui Hawaii. Exercising the jurisdiction, over the Hawaiian archipelago.

Our sacred Queen, Keopuolani, at her death bed on Sept. 15, 1823, expressed to Kamehameha the II, "take care these lands that belongs and received from your father, Kamehameha the Ist. Exercise a tender care over your native Hawaiian people".

Kamehameha II, reaffirmed the Hawaiian people of governance since time in memorial, "Ua mau ke ea o ka aina I ka pono", (the life of the land is perpetuated in righteousness).

On Aug. 19, 1850, the Nation of Hawaii and Kamehameha III entered into Treaty of Peace and Amity, with the Commerce and Navigation by conspiracy from the United States of America, declaring perpetual force against Native Hawaiian people.

The United States of America recognized the Native Hawaiians and stole their lands.

1.) The Hawaiian Homes Commission Act, 1920 (July 9, 1921 42 Stat. 108, Chapter 42 as ammended;
2.) Act of Mar. 18, 1959 Public Lands 86-3 73 Stat. Sec. 4.
3.) The State of Hawaii Admissions Act, 1959 Public Lands 86-3 73 Stat. 4, Sec. 5 (f). It was created for the betterment, conditions of our people.
4.) The two public Trust Lands are:
    A. Native Hawaiian Land Trust
    B. Public Land Trust
    These belong to the Native Hawaiians, their heirs and beneficiaries.

Now, we the Native Hawaiians,adopt this constitution for the Nation of Hawaii to exercise the rights and self-determination, to build a nation, to establish our traditions before an orderly and representative interim government to provide for the citizenship, promote the welfare of our native Hawaiians and children.

Exercise our rights of our homerule, secure the blessings of freedom and liberty, develop our trust and resources, conserve our trust assests, dedicate ourselves and Hawaiian Nation to disarmament, peace with absolute faith in equity and justice.

Mahalo,

Irene K. Maynard

Irene Kaeo Niau Maynard

PREPARED STATEMENT OF LOUIS AGARD CHAIRMAN, COORDINATING COMMITTEE TO ADDRESS REPARATIONS, COUNCIL OF HAWAIIAN ORGANIZATIONS

The Honorable Senator Daniel Inouye, your efforts to bring into focus for native Hawaiians a long standing issue of reparations is much appreciated.

The three options being dicussed are welcome. However, it emphasized that the issue is solely reparations. Reparations for the "acts of war", president Grover Cleveland's definition in his December of 1893 Congressional address, committed against the native Hawaiian community in January of 1893.

A review of the agenda for the hearing of August 26, 1988 has been carried out by the Council of Hawaiian Organizations (COHO). COHO is a group of individuals who are interested in the welfare of the native Hawaiian community in general.

On first appraisal, the option to introduce a concurrent resolution to establish a Congressionally appointed commission to study the historical events surrounding the overthrow, presents a reasonable course of action.

A second option would be to refer the Hawaiianclaims question to a Claims Court.This prodedure may take longer and be more costly than the first option.

A third option is to have another study commission to review all the data available. Basically, whichever option is selected, should address reparations as first raised by president Cleveland in 1893. There should not be a mixing of issues of domain and dominion, as this has added to confusion and making the issue too widespread.

It is suggested a fourth option might be considered. And would be composed of three essential actions. 1) The Congressional Research Service (CRS) report of 1973 stating an argument that native Hawaiians are compensable by the King Kamehameha I edict, "all of the lands from one end of the Kingdom to the other, belong to the Chiefs and people in common". Which might describe use and occupancy benefits, if denied, would result in damages due. 2) The U.S. House of Representatives McCreary Resolution of 1894 condemning the use of U.S. troops in the act scantioned by the U.S. Minister Stevens, who committed an international crime by interferring in the internal affairs of a nation to which he was accredited by placing also a protectorate over the native Hawaiian homeland.

3) The president Cleveland address to the congress in 1893 proposing reparations for the "acts of war" committed against native Hawaiians. Essentially the fourth option is an attempt to narrow down investigations to the fundamental question of reparations for the past subjugation of native Hawaiians.

On the issue of who is to recieve reparations, for the present, it is suggested a joint account of the Department of Hawaiian Home Lands (DHHL) and the Office of Hawaiian Affairs (OHA) be created to recieve and dispense reparations of any kind. If only because the two agencies can service differing benficiaries, i.e. DHHL may serve 50% or more native blood and OHA less than 50%. Further there would be a mixing of appointed and elected members who can represent the widest concernswithout an undue contemporary mixing of responsible roles. A fundamental check and balance syst system could be in place, particularly if a 75% majority of the appointed and elected group would be necessary to permit funding anything over a specified amount.

Native Hawaiians are in need of a treasury to replace one seized in the 1893 coup. The treasury can be the joint account of DHHL and OHA. No more than 10% of such a treasury should be expended in any one year to give a ten year life to such an account to make adjustments if necessary.

The division of benefits might be considered on the basis of three parts, or to past, present and future users of the treasury benefits. There can be much more dialouge on this subject of users and criteria.

For instance past (deceased) users benefits could be used for land banking. Because lands available for housing can be expensive and will likely become more costly as time goes on. The present users qualify for benefits for educational and public purposes as identified in the Reslution of Annexation of 1898 in Article II. Benefits for future users can be held in reserve. This would appear to be an even distribution for all intentional purposes. There could be other formulas to allocate reparations.

Reparations are an issue as raised by president Cleveland and also because of an Act by the legislating Privy Council of the kingdom on 27th of April 1845 approving a land division to native chiefs and commoners. The Act divided lands by metes and bounds of a named ahupuaa. Native Hawaiians have a recorded history of a land division by metes and bounds to identify their land interest. It is this interest that gives rise to reparations. Just as the U.S. Constitution 5th Ammendment, that states, "compensation cannot be denied for the use of real property", so would native Hawaiians be compensable for "acts of War" committed against them and which denies them property rights.

There undoubtedly is cause to settle "political claims" of some native Hawaiians. Just as was considered when negotiations were being conducted with Kamehameha III and again considered in the case of Queen Liliuoklani.

There are several formulas that might be devised to compute reparations. On a per capita basis since the overthrow, or one computed on the Resolution of Annexation in Article II, directing that the ceded land income after costs of government shall be used solely for the educational and public purposes of the inhabitants. Inhabitants must include native Hawaiians from time immemorial and who had vested and equity interests in all of the lands in Hawaii as indicated in the Privy Council action of April 27, 1845 statute.

The choice of options should be based on how binding a finding maybe. Submit the question to an administrative fact finding panel before proceeding before a Claims Court. This may save research time and therefore costs.

PŌKĀ LAENUI
(HAYDEN F. BURGESS)
Hawaiian Citizen
and
Vice-President of the
WORLD COUNCIL OF INDIGENOUS PEOPLES (WCIP)
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Prepared Statement for Dialogue with

SENATOR DANIEL K. INOUYE
American Citizen
on behalf of
U.S. SENATE SELECT COMMITTEE ON INDIAN AFFAIRS
at said committee's invitation.

August 26, 1988
East West Center,
Manoa, Hawaii

CAVEAT: I remain firm in the position that the question of absolving the United States of America from its position as an international delinquent due to its invasion of a sovereign nation in 1893 and its continued occupation of Hawaii up to the present time, is not a question which the United States can resolve itself. To do so would be tantamount to allowing a thief to sit in judgment of itself and to decide on its own punishment, if any. Such an approach is ludicrous, yet remains a serious illusion maintained by Americans in and out of the U.S. Congress. (See articles entitled: Thief in Judgment of Itself, ____, 1985, and An American Illusion, Feb. 1986, Ka Wai Ola O OHA attached.)

What then is the "proper" approach to resolving the dispute over the United States' activities in Hawaii beginning since the events of 1893 and continuing? Reparations is a one way street. The U.S. decides if they wronged us: they decide how badly: they decide what to do about it. Added to this self-rightousness approach is the added layer of American political consideration which has time and again emerged in Commissions and Reports of the United States. Ho'oponopono is a two way street. We and the United States enter equally, approaching a third, impartial and independent party, to determine the wrong, the extent, and the appropriate remedy. We are accorded the full respect we deserve. The solution agreeable; the forgiveness complete. (See article: Reparation or Ho'oponopono, March 1986, Ka Wai Ola O OHA, attached.)

Ho'oponopono is an internationally accepted concept although using other names. It is not an attempt to carve out a new set of international procedures to resolve the Hawaiian case. It simply places the case in its proper perspective, nation to nation and nothing less.

A call for such procedures is beginning to be heard in the international arenas. The Pacific Region of the World Council of Indigenous Peoples (WCIP) adopted in 1984 a resolution calling for an independent international commission to consider the question of the United States' as an international delinquent as a result of its aggression against Hawaii in 1893 and its continuing occupation of Hawaii today. That resolution has been adopted by the General Assembly of the WCIP at its 4th General Assembly in 1984.

That call for such a commission has been formally presented before the Law Association of Asia and the Pacific (LAWASIA) in Fiji in 1985 and the United Nations' Working Group on Indigenous Populations in 1985.

I shall continue to maintain that an impartial international commission is the appropriate mechanism to address the issue of the United States' activities in Hawaii.

The entry into a dialogue with officials and or representatives of the United States government or any branch thereof is not to be construed as a submission of the matter under discussions to the full or unilateral discretion of the United States. Consistent with the understanding that "a resort to arms is never justified unless and until an appeal to reason has been exhausted," I accept this invitation to meet with this committee.

NARRATIVE

Ano 'ai me ke aloha.
In the spirit of Aloha, I greet everyone.

Mr. Inouye:

Your kind invitation to meet with this select committee on Indian Affairs was addressed to me on behalf of the World Council of Indigenous Peoples (WCIP) and on that basis I accept. But just as a person can not split his spirit, I can not relinquish my identity as a Hawaiian. Thus, I appear here as a Hawaiian citizen and on behalf of the WCIP.

Very briefly, the WCIP is an international non-governmental organisation (NGO) having membership of indigenous organisations from five major regions of the world. These regions are 1- Scandinavia, 2- South America, 3- Central America, 4- North America and 5- the Pacific and Asia. We are engaged in both human rights advocacy at the international level as well as developmental programs in our regions. We have consultative status with the United Nations and confer yearly with such United Nations organs as the Commission on Human Rights, Sub-Commission on the Elimination of All Forms of Racial Discrimination, as well as its Working Group on Indigenous Populations.

The WCIP has also worked with other international organisations including the International Labour Organisation (ILO), the Organisation of American States (OAS) CONTADORA (a number of Central and South American countries seeking a peace solution in their regions), UNESCO, World Council of Churches, and many more. (See attached brochure)

Mr. Inouye,

Let me begin my substantive remarks by noting that I can appreciate your concern and good intentions in addressing the matter of the United States illegal activities in Hawaii. However, some fundamental principles upon which you operate are totally unacceptable to me as a Hawaiian citizen. Let me illustrate:

Referring specifically to your invitation letter at page one, there can be no thorough and unbiased study conducted by the United States of the historic events regarding U.S. action in Hawaii. To attempt to do so would merely perpetuate the "Thief in Judgment of Itself" syndrome. The problem is not resolved by having an "impartial" committee made up of Democrats and of Republicans for it would remain an American committee. Nor is the problem resolved by constituting a committee made up of Americans of different racial ancestry.

Compare with presentation
of Pōkā Laenui

Secondly, the thought of Congressional compensation to the Hawaiian people for losses in itself presumes that compensation is an adequate and appropriate response and the only question is the dollar amount. Yet, I have never heard anyone of responsibility in the Hawaiian nation ever suggest that the right to self-determination was up for sale.

The typically American response to buy America's way out of criminality they can not deny, is not sufficient. It may have worked for the case of the Americans of Japanese ancestry incarcerated during the Second World War and eventually set free. But how can it work with a people who remain occupied and never released from United States domination?

Further in your letter of invitation, three alternative solutions are offered for consideration - resort to the U.S. Claims Court, referral to a Congressionally-appointed commission, or referral to a presidentially-appointed commission. But all of these alternatives are "solutions" within the American context. Do not forget that the heart of this problem is that another nation has invaded and continually occupies an independent nation. How can that invading nation resolve its delinquency by these three alternatives. There is a loss of perspective here. We should be discussing these questions in an international context rather then the limitations of the invading nation's context.

I hope you can now appreciate what I mean by suggesting earlier that we operate from fundamentally different principles.

Does this mean that we who have such fundamental differences have nothing to talk about in terms of reparations or any other Congressional response?

If "reparations" is meant to be an absolution for United States' wrongs committed in Hawaii, there is nothing further to discuss. I reject it totally.

If "reparations" is meant to address the human conditions of the Hawaiian race, the indigenous race of Hawaii, leaving aside any question of fault or cause for such condition for another time and place, then there is much to talk about. On this second assumption, I continue this discussion.

I will not review the social, economic, or health conditions of the Hawaiian race. You already have more resources of information, many who are participating in this hearing, which far exceed my knowledge. But I do want to dwell for a moment on the concept of the Hawaiian race.

What is the Hawaiian race? First, it is not the Hawaiian nation. The Hawaiian nation is a political entity consisting of

Compare with presentation
of Pōkā Laenui

people of different races but who maintain an allegiance to Hawaii. Looking into our history, you will find that Hawaiian nation had citizens of various races.

If we strip aside the philosophical, spiritual, and emotional aspects of the Hawaiian race, then it is the oldest to the youngest individual alive today who has flowing in his or her body the blood of ancestors who populated these islands before the discovery of James Cook lost at sea (that is we found him!). I will call this the biological definition.

But if we do not strip away those philosophical, spiritual and emotional aspects and consider the race intact, than the Hawaiian race is a continuam stretching as far back into time as creation itself and as far forward into time as the last of the Mo'omo'o will be birthed. The Hawaiian race is part and parcel, not of land, but of its traditional territories of the earth, meaning the mountains, the plains and the valleys, the ocean, rivers and streams, the minerals, the steam however deep they may be found, the rain, the air space to where the highest birds fly, and all the plants and animals, fishes and birds where ever they may be found. The Hawaiian race consists of both individuals and a collective. They are inseparable. A primary characteristic of the Hawaiian race has always been free will. This I call, the comprehensive definition.

This comprehensively defined race is the Hawaiian race that should be addressed by Congressional legislation.

What are some of the responses possible to address the plight of this race?

a) Monetary
More important then the question of amount is the question of direction of programs supported by a monetary response. Such programs must pay adequate attention to the collective nature of the Hawaiian race, must give due regard to traditions and cultures of the ancients, and must never lose sight of the generations to come. Emphasis, therefore, must be given to the language, history, tradition, culture, literature, and arts of the Hawaiian race which gives a collective identity to the race. Emphasis should also be given to programs of self-sufficiency and independence to give the needed mental attitude for the continuity of this race with or without governmental support. Therefore, a monetary response can not be a mere one-time cash out for that would only address the biological definition of the Hawaiian race.

b) Resource transfer (return)
Turning over of resources to the Hawaiian race for their collective ownership, possession, use and control should also be an appropriate response. It is becoming more and more widely

recognized that the possession of traditional territories indigenous peoples have occupied is essential to the cultural and even physical survival of such peoples. (See full discussion in Report VI(1) Partial Revision of the Indigenous and Tribal Populations Convention, 1957 (No. 107) ILO, Meeting of Experts at pp 110 et. seq.)

At the present time, the U.S. government holds "ceded" lands. However, these lands are presently under restraint by §5 of the "Admissions Act" as to its use and disposition. Creative reading or Congressional action such as Act 88-233 affecting §5(e) of this Act can be accomplished to turn over these resources to the Hawaiian race. Fee lands which carry no such restraint in the "Admissions Act" could also be a source of resource transfer.

Such a transfer, however, would probably have to break new ground for the United States in Hawaii in terms of addressing the issue of collective rights. In ancient Hawaiian times, however, this was not an unusual concept (Ahupua'a). Nor is it an unusual concept in many other parts of the Pacific.

This concept involves not only mere ownership but the concept of "control" as well. Thus, the collective would decide on issues such as building requirements, water rights upon these lands, zoning rules, taxing and police powers, etc. Again, this is not a new concept, either in Hawaii or internationally. Under the Hawaiian Homestead program, some of these powers are already recognized.

If we look at the activities happening internationally, we find similar activities taking place. In Nicaragua, their Autonomy law approaches this concept of autonomy of departments in the Atlantic Coast. At the 75th Conference of the ILO, active debate over this subject was had. Even at the United Nations, the primary document now under consideration by the Working Group on Indigenous Populations contains elaborate rights of indigenous peoples to such controls. (See Economic & Social Council document E/CN.4/Sub.2/1988/25 of 25 June 1988 at p. 4)

c) A place for every Hawaiian

A program addressing the plight of individuals or collectives indigenous to Hawaii, yet finding themselves strangers in their own homelands, forced to give in to the dominant society. Laws must be adopted respecting their "place" in their homelands, to be Hawaiians consistent with their own views and aspirations.

That place may be political, economic, cultural, religious, educational, etc. For example, if an individual or group asserts that they are not American citizens but remain Hawaiian citizens, that assertion should be respected and in no way interfered with. If an individual or group asserts that they want to practice their traditional lifestyles, that right must be respected. If they assert they have the right to educate their children in their own ways, that right must be respected.

Impossible? No. Difficult? Perhaps. But this type of condominium relationship is not unheard of or untried. Indeed, it goes on today here in Hawaii with your different layers of laws, County, State, Federal and international. It went on in the New Heberdies under British law and French law until their independence into a new nation, Vanuatu. This type of condominium relationship has every support in history and law in view of the continuing unresolved matter of the American conduct in Hawaii and the undeniable fact that the Hawaiian nation has never consented to becoming part of the United States or its people accepting American citizenship.

d) Recognition of autonomy

Autonomy is not nationhood or sovereignty. It is just one position on the plane of self-determination. Even among governments which will not concede that indigenous peoples have the right to sovereignty (I use the terms "nations" and "sovereignty" not as defined by the Americans as it regards Indian nations but in the international law sense), they recognize the right to autonomy. Thus it is generally agreed within international forums that the right to preserve their cultural identity and traditions and to pursue their own cultural development lie with the indigenous peoples or their members. Other rights such as the right to manifest, teach, practice, and observe their own religious traditions and ceremonies, access to sacred sites and burial grounds, to maintain and use their own languages, to all forms of education accessible in their own language and to promote intercultural information and education all rest with the indigenous peoples.

The right to maintain their traditional economic structures and ways of life, to be secure in the enjoyment of their own traditional means of subsistence, and to engage freely in their traditional and other economic activities are all generally recognized.

This sense of autonomy of an indigenous people is essential for the survival of that people. It gives the people a sense of the collective nature, it builds a basis for identity among themselves. Without the ability to protect this collective nature of a people, they become deprived of their identity as a people which is tantamount to ethnocide.

I have suggested four areas I believe fruitful for your consideration in responding to the plight of the Hawaiian race on a humanitarian basis.

Compare with presentation
of Pōkā Laenui

P.

If we can agree that government is formed for the primary purpose of protecting and promoting the welfare of people it is responsible for, then in view of the plight of the people of the Hawaiian race as reflected in the available economic, social, cultural and educational data readily available, the U.S. government should respond immediately to prevent further deterioration of the indigenous peoples of Hawaii.

Ano 'ai me kou alahele.

Pōkā Laenui

Pōkā Laenui

Compare with presentation
of Pōkā Laenui

Reparation or Ho'oponopono

March [illegible]

By Hayden Burgess
Trustee, Oahu

Which dispute-resolving method is appropriate to us?

Reparations is a one way street. The U.S. decides if they wronged us: They decide how badly; they decide what to do about it. And having decided, the case is closed with a few dollars to the natives. Its the same old treatment we've received under U.S. domination since the theft of 1893. "The thief sits in judgement of himself!"

Ho'oponopono is a two way street. We and the U.S. enter equally, approaching a third, impartial and independent party, to determine the wrong, the extent, and the appropriate remedy. We are accorded the full respect we deserve. The solution agreeable; the forgiveness complete.

Reparations will never be the final answer to U.S. criminality in Hawaii. At most, it is a temporary, incomplete solution, fashioned by the U.S. to serve its interest. I say we should be treated as equals in this process.

My critics scream: "How can you say you're equal; Hawaiians have no nation! Where's your leader, your exclusive territory, your government institutions, your soldiers, citizens and all those other things nations have?"

I say: "How can the U.S. deny us our nationhood when the U.S. is the very cause of the destruction of those characteristics of a nation. The U.S. is estopped from asserting that argument as a defense. Rather, the assertion actually becomes an admission of the extent of the injury, which injury derives from U.S. criminality."

The criminal can not seek escape from the fact that he has committed such a total crime that he succeeds in stopping the victim from gaining entry into the forum. Otherwise, the criminal not only escapes; he profits in proportion to his crime. Thats nonsense.

Common sense demands that the victim be accorded all the rights and dignity he had been entitled to at the time of the crime. Hawaii, at this time of the U.S. invasion, was a sovereign and independent nation, entitled to all the rights and dignity accorded any other nation, including the U.S. It must be accorded that equal status in the present search for American redemption through justice for Hawaii. Otherwise, the exercise is a farce.

I hereby give notice to the U.S., any reparations legislation will not constitute the final resolve of your crime to Hawaii.

KA WAI OLA O OHA

by [illegible]

Again, the issue of Hawaiian reparations arise in public circles. One proposal calls for equating Hawaiians with American Indians, tossing us some coins, return lands the U.S. doesn't want and making reforms at Hawaiian Homes. Of course, the U.S. Congress will decide what to give us and what to keep. The trade off — the U.S. wipe their conscious clean, they keep what they want and close the door on the Hawaiians to any further claim to self-determination.

Simple, cheap, permanent.

Too often, we forget who and what we are. We are not merely a gang of indigenous people who once occupied a territory, dancing and singing our lives away. We are not a tribe, a band, or a group of people who had one or two peace agreements with the Yankee.

We are a *nation*. Before the 1893 U.S. invasion, which constituted the most blatant breach of international laws, the nation of Hawaii was no different in legal rights, in international integrity, in territorial and political sovereignty as any other nation which today exists.

Since Kamehameha I's reign (1779 - 1819), Hawaii was a recognized sovereign nation by international standards. Hawaii was first to salute Argentina's independence, was trading with China, England, U.S. and others on a regular basis.

By 1887, Hawaii had treaties and conventions with Belgium, Bremen, Denmark, France, German Empire, Great Britain, Hamburg, Hong Kong, Italy, Japan, the Netherlands, New South Wales, Portugal, Russia, Samoa, Spain, the Swiss Confederation, Sweden and Norway and Tahiti. With the U.S. we had The Treaty of Commerce (Dec. 23, 1826); of Friendship, Commerce and Navigation (Aug 24, 1850); Rights of Neutrals at Sea (Mar. 26, 1855); Commercial Reciprocity (Sept. 9, 1876); and another Commercial Reciprocity (Nov. 9, 1887).

Hawaii was a member of the Universal Postal Union, the forerunner of the League of Nations and later the United Nations. We had approximately 100 diplomatic and consular posts around the world.

On Nov. 28, 1843. Great Britain and France joined in a declaration recognizing Hawaii's independence and pledging never to take possession of Hawaii. When the U.S. was invited to join, J.C. Calhoun, Secretary of State, replied that the President adhered completely to the spirit of disinterestedness and self-denial which breathed in the declaration, so it was no need to join.

Let us not fall to the illusion that we are something less than the U.S., that we are nothing more then miniature yankees, that we are nothing before their grand theft.

As we consider any program of Hooponopono between ourselves and the U.S. government, we must always keep in mind our proper stature, not as a conquered people but as victims of an international crime which span 93 years and continues.

A THIEF IN JUDGEMENT OF ITSELF

by Trustee Hayden Burgess

There is no error more common than that of thinking that those who are the causes on occasions of great tragedies share in the feelings suitable to the tragic mood.

Oscar Wilde

Do not ask a thief to judge his own conduct and to decide his own penalty.

Panelist on Hawaiian
Affairs, Univ. of Hawaii

Both statements point to the error we constantly repeat, the belief that the U.S. government possess that quality of "enlightened justice" to admit its role in the theft of Hawaii's sovereignty and to invoke the appropriate remedy.

Lili'uokalani was the first to fall victim to this error, followed by the Hawaiian Patriotic League and others.

All were betrayed when the U.S. found it more expedient to overlook the conspiracy between the American Minister and American residents in Hawaii.

Let us never forget that the U.S. invaded our nation and wrested the powers of government from the legitimate ruler, Lili'uokalani. It placed into power its puppet, the "Provisional Government," proclaimed by American citizens to exist until terms of annexation with the U.S. could be achieved. It protected that puppet government and its child, the "Republic of Hawaii" through armed troops. When American public opinion overlooked the theft four years later, the U.S. formally occupied us, accepting the fruits of its conspiracy in the "treaty of annexation."

Through the years, the U.S. has controlled Hawaii's immigration and trade policies, ran Hawaii's politics and recycled Hawaii's people into believing their myth that we were a defeated people and that the life of the nation was extinguished. It colonized us and branded us "Americans."

Today, thousands of our people plead their hearts out believing that this U.S. government's latest creation, a "Study Commission", will truly review the tragedies wreaked upon our people and nation and offer up the appropriate remedy. And again, we see that the American thief will not judge its own theft much less invoke the appropriate remedy.

It is time we broke this mental shell of "American Protectionism" and entered the world of reality. The theft of Hawaii's national independence should not be contained within the United States: it is a matter of international stature.

There is no essential difference between this occupation of our independent Hawaiian nation from any other occupation. Indeed, this is more blatant than the recent Soviet Union's incursions into Czechoslovakia and Poland.

The appropriate forum to address this matter is not the U.S. Congress but the international courts. The U.S. can not be expected to judge its own acts for that would be asking a thief to sit in judgment of itself.

Think about it.

(12)

NATIVE
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TESTIMONY OF MAHEALANI ING,

Executive Director,
Native Hawaiian Legal Corporation

Before the Senate Select
Committee on Indian Affairs
Honolulu, Hawai'i
August 26, 1988

Good morning Senator Inouye. My name is Mahealani Ing, Executive Director of the Native Hawaiian Legal Corporation, or NHLC. My testimony this morning will be brief.

Let me begin by giving a little background on our organization. NHLC is a non-profit, public interest lawfirm incorporated in 1974 which serves Hawaiians. It is funded in substantial part by the Office of Hawaiian Affairs, and its five-attorney staff works to assert, protect and defend Native Hawaiian land and traditional rights. It is governed by a twelve-member board, seven of whom are attorneys appointed by the Hawaii State Bar Association. Thank you for the opportunity to testify at this hearing, and to present the views of my organization.

I would like to begin by moving directly to the very important theme which has emerged at this hearing, and which I am sure will surface again in the context of other presentations following mine this morning. That theme is native governance and self-determination.

In Hawaiian communities, especially within the past ten years, native initiatives for self-government have gained tremendous momentum. When presented with the opportunity to vote for representatives who would oversee matters pertaining to Hawaiian affairs, sixty-thousand individuals registered to vote for OHA trustees. In addition, there are strong, community-based organizations whose substantial membership have declared themselves citizens of the Hawaiian nation. The press for sovereignty and self-determination is on. The time is now. I mention this at the onset because it is the basis of my response to the inquiry before us.

At a recent conference coordinated by my organization, 85 conferees who opted to meet an extra day developed principles embodied in five points which they believe must be included in any Hawaiian restoration "package". These principles, which the Native Hawaiian Legal Corporation supports, include:

1) An apology by the United States government to Native Hawaiians and their government for the U. S. role in the coup of 1893;

2) A substantial land and natural resource base comprised of a reformed Hawaiian Homes program, a fair share of the ceded lands trust, the return of Kaho'olawe, and other appropriate lands;

3) Recognition of the Native Hawaiian government with sovereign authority over the territory within the land base;

4) Guarantees of (a) substantial beach access, (b) fishing, hunting and gathering rights, and (c) protections for Native Hawaiian religious practices and historic sites; and

5) An appropriate cash payment.

There are undisputed facts relating to wrongful acts committed by United States' agents in 1893 which compel us to insist that past injustices be acknowledged; that compel us to insist that lands and money be returned to the native people and indigenous rights guaranteed; that compel us to insist that our right to govern our nation be acknowledged, respected, and supported.

We are certain that comprehensive reform legislation must be adopted embodying the five objectives set out above. We are not certain, however, of the specific means that would best achieve those critical objectives. Therefore, we anticipate detailed discussions with your excellent staff in the upcoming months to explore all suitable options. We expect to be full partners in this process. We are a competent and committed people. We are competent to formulate and implement whatever strategies are necessary to achieve our goals. We are committed and dedicated, and utterly determined that wrongs of the past will not be visited upon our children.

We do not favor the U.S. Claims Court option. It appears too great a risk, and impolitic, to submit the collective dreams of our nation to a panel of judges, geographically and culturally distant, with limited or no background in Native Hawaiian history and rights, and whose decision will stand, unchallengable, for all of time. The U.S. Claims Court may have jurisdiction over money claims and land claims, but these things do not reach the heart of our deepest concerns.

That is why we must insist on an apology for what happened to our Queen. And we know that ultimately the dignity of any people resides in their recognized and acknowledged right to govern themselves. Sovereignty also is at the heart of any meaningful reform legislation.

Even visitors to Hawai'i recognize a fundamental truth about the native Hawaiian in Hawai'i: he is displaced. His beloved land is overrun and controlled by others. How did he so quickly change places with landless, immigrant others? Whatever clever machinations were utilized, they were, and until corrected, will continue to be, regarded by the Hawaiian people as a hurt not healed, unhealable. They know their history. They know their land and sovereignty was wrested away, not freely transferred--stolen, not given with aloha.

During the Native Hawaiian Study Commission hearings, we said these things over and over. We said these things many thousands of times. In community hearings throughout the state, we said these things forcefully, eloquently, poignantly, compellingly. We said these things and rallied uncontrovertable facts, indisputable facts which pointed to U.S. culpability. We were told we needed a "smoking gun". More facts. More evidence of "agency".

We do not believe final resolution of our claims will be determined by whether or not we satisfactorily supply "hard" evidence of agency. We have supplied the evidence. Our daily lives; our patent, obvious and real (not imagined) separation from the land and things sacred to it, our seeming political disorientation--these things eloquently speak not only to our collective awareness that something very wrong has happened, but to the awareness of all citizens of conscience.

The Native Hawaiian Legal Corporation, therefore, strongly favors direct legislation. However, if more fact finding is the political reality we must deal with, we would support a Congressionally-appointed Commission as an expedient less objectionable than a Presidentially-appointed one.

Ultimately, Mr. Chairman, the concepts of restitution and reparations are ill-suited to the problems facing Hawaiian people. Rather, comprehensive legislation providing for the restoration of Hawaiian land and sovereignty, as set out in the five-part program, is the appropriate basis on which to proceed. The objective--the only objective that will really work--is the restoration of a full government-to-government relationship between the United States and the Hawaiian Nation. I promise you the complete efforts of my office in working with you and your staff to achieve that historic goal.

TESTIMONY OF STEVEN C. MOORE
OF THE NATIVE AMERICAN RIGHTS FUND
BEFORE THE
SENATE SELECT COMMITTEE ON INDIAN AFFAIRS
ON THE SUBJECT OF THE 1893 OVERTHROW
OF THE HAWAIIAN MONARCHY

* * *

August 26, 1988

* * *

Keoni Auditorium, East-West Center
University of Hawaii
Honolulu, Hawaii

Introduction

Mr. Chairman and members of the Committee, I am Steven C. Moore, Staff Attorney of the Native American Rights Fund. I am pleased to offer testimony on behalf of NARF on the subject of the appropriate response of the United States Government to the 1893 overthrow of the Hawaiian Monarchy.

The Native American Rights Fund serves as the national Indian legal defense fund in the United States. Since 1970 NARF has assisted several dozen Native governments in seeking and securing political recognition from the government of the United States. This number includes several tribes terminated under the Federal government's termination policy of the post-World War II era, with whom we have worked to gain restoration to full tribal status under federal law and policy. Among the more memorable of these achievements include the Menominee Tribe Restoration Act, 87 Stat. 770 (1973); the Maine Indian Claims Settlement Act, 94 Stat. 1785 (1980); and most recently the Yselta Del Sur Pueblo and Alabama and Coushattta Indian Tribes of Texas Restoration Act, 101 Stat. 666 (1987).

It is thus as a national organization committed to the preservation of Native governments and peoples that we testify today at the Committee's invitation in support of Native Hawaiian sovereignty, not as a law firm testifying on behalf of a specific client. Because of NARF's unique organizational status we have valuable insight gained by past experience to share with this Committee, the Congress and with the Native Hawaiian Community generally, concerning the fundamental right of Native people to govern their own affairs.

First, we want to extend our appreciation to Chairman Inouye, who should be individually recognized for his efforts to keep alive the idea, which others would soon forget, that a wrong was committed by the United States against the Hawaiian Monarchy. This wrong is like a festering sore on the American conscience; it must now be healed. And while we applaud this most recent proposal which forms the basis for this hearing, NARF is fundamentally opposed to a cash-out or cash settlement of claims as the sole method of redress. Cash payments alone simply do not work. The Indian Claims Commission Act of 1946 which limited settlements of tribal claims to straight cash payments have never worked economically or socially. They have never been satisfactory to Indian people. A more comprehensive approach is needed.

We offer our perspective and experience, however, with one important caveat. The claim of the Native Hawaiian people to sovereignty and self-government is sui generis, arising from historical experiences with the United States which resemble but which in key respects differ from the American Indian experience on the mainland, or the Native experience in Alaska. Thus it is not our mission or even our desire to see the model of Federal-Tribal relations from the mainland imposed upon the Native people in Hawaii. If Hawaiian Native people can learn from the mainland Tribal experience, improving on it, so much the better for everyone involved. But, simply put, it is for the Native Hawaiian people to chart their own destiny.

Having said that, however, from NARF's perspective there are unmistakable parallels between the 1893 overthrow of the Hawaiian Monarchy and Congress' unilateral divestiture of Indian tribal recognition in the Termination Era of the 1950s. This whole question of return of sovereignty and self-governance to Hawaiian Natives therefore should be viewed from a "restoration" perspective. Indeed, both Queen Liliuokalani and President Grover Cleveland referred to the concept of restoration in connection with post-1893 efforts to return the Queen to the throne of the Hawaiian Monarchy. The United States must now confront the illegal events of the past, and begin the process of restoring to Hawaiian Natives their sovereign birthright.

The Fundamental Right of Self-Governance for Hawaiian Natives

Like a small ship, Hawaiian sovereignty has been cast adrift for nearly a century waiting with eager anticipation for that day when the right combination of ocean currents and trade winds would return it to the beautiful Islands of Hawaii. The dream was first dreamed by Queen Liliuokalani, perhaps from her jail cell in 1893. That dream has now entered the collective consciousness of thousands of Hawaiian people. But what exactly does the dream entail?

I am reminded in these times of the immortal words of Felix Cohen, who in his short lifetime wrote prolifically on Indian law and legal philosophy. In 1949, on the verge of the Indian Termination Era, and perhaps in defense of the fragile Native governments in the United States which he perceived to be on the precipice of destruction at the hands of the post-war industrial society, Cohen wrote a short essay for The American Indian entitled "Indian Self-Government".

In the essay Cohen, after tracing four centuries of historical, philosophical discourse on the self-governance rights of indigenous peoples, asked rhetorically

> How can we explain the fact that despite all the respect and reverence shown to the principle of self-government. . ., there is so little left today of the fact of Indian self-government? How can we explain the discrepancy between word and deed?

Cohen answered his question in terms of what he called the "white man's hypocrisy", otherwise termed "the egocentric predicament", which he described thusly:

> The great American philosopher, Ralph Barton, Perry, coined the phrase, "the egocentric predicament", to call attention to the fact that each of us is at the center of his world and cannot help seeing the world through his own eyes and from his own position. It takes a certain amount of sophistication to realize that the vision of others who see the world from different perspectives is just as valid as our own. One of the striking features of the administrative or bureaucratic mind is that it lacks such sophistication. Thus it often turns out that the officials who have most to say in praise of Indian self-government have a certain blind spot where Indian self-government comes close to their own activities.

We must ultimately respect the different perspective Hawaiian Natives have on the world, as well as their right to carry forward that perspective in concrete governmental actions. Cohen defined this right - the right of self-government - as "that form of government in which decisions are made not by the people who are wisest, or ablest, or closest to some throne in Washington or in Heaven, but, rather by the people who are most directly affected by the decisions." In this vein it comes as no surprise what contempt Cohen held for what he termed "the various modern forms of aristocracy, or government by experts."

The white man's hypocrisy - the egocentric predicament - spawned the legacy of paternalism in Indian affairs in the United States. Cohen attributes Carl Schurz, former Secretary of the Interior, with the statement to a group of Indians opposing the actions of their local Indian agent: "The Great Father is a very wise man. He knows everything, if there is anything wrong with your agent, he will know it before either you or I know it."

Cohen had a simple prescription for curing the egocentric predicament in the federal government's treatment of Indian self-governance. His antidote came in story of Alexander and Diogenes:

> We all recall that when Alexander was ruler of most of the known civilized world, he once visited the philosopher Diogenes, who was making his home in an old bathtub. Diogenes was a rich man because he did not want anything that he did not have. He was a mighty man because he could master himself. Alexander admired Diogenes for these qualities, and standing before him said, "Oh Diogenes, if there is anything that I can grant you, tell me and I will grant it." To which Diogenes replied, "You are standing in my sunlight. Get out of the way." The Federal Government which is, today, the dominant power of the civilized world cannot give self-government to an Indian community. All it can really do for self-government is to get out of the way.

Though at first blush Cohen's advice seems too simplistic for today's complex society, like most of Cohen's thoughts on Indian affairs this statement is deeply profound and alluring. Cohen is not telling us to leave the restoration of Hawaiian Native sovereignty solely in the hands of Hawaiian Natives. For, while it is their government to forge anew, it cannot be shaped in a vacuum. It will take a broad-based alliance of interest groups working to counter the fear and paranoia of various entrenched interests both in Hawaii and on the mainland, who will at first be threatened by the prospect of Native sovereignty. And, like Cohen noted, the "experts" in the state and federal governments will be there to oppose the movement on the grounds that Hawaiian Natives are not sufficiently educated or sophisticated in the ways of the White man's government to take over responsibility for and governance of their own affairs. We've heard that line on the mainland for two hundred years.

What Cohen understood by his prophetic statement that all the Federal Government can really do is "get out of the way" was that the right of self-government is inherent and inalienable. Hawaiian Natives have the self-appointed mission of realizing their Queen's dream, the dream of restoration. That dream has been realized in the past quarter-century by scores of previously unrecognized or terminated Native American tribes, consistent with unambiguous Federal law and policy. What legitimate reason exists for leaving Hawaiian Natives behind? It is no longer a question of "if", but a question of "when". The Native American Rights Fund believes that the time is now.

Cohen best understood how we all stand to gain by advancing the cause of Native self-governance:

> The issue is not only an issue of Indian rights; it is the much larger one of whether American liberty can be preserved. If we fight only for our own liberty because it is our own, are we any better than the dog who fights for his bone? We must believe in liberty itself to defend it effectively. What is my own divides me from my fellow man. Liberty, which is the other side of the shield of tolerance, is a social affair that unites me with my fellow man. If we fight for civil liberties for our side, we show that we believe not in civil liberties but in our side. But when those of us who never were Indians and never expect to be Indians fight for the cause of Indian self-government, we are fighting for something that is not limited by the accidents of race and creed and birth; we are fighting for what Las Casas and Vitoria and Pope Paul III called the integrity or salvation of our own souls. We are fighting for the last best hope of earth. And these are causes that should carry us through many defeats.

More recently, Thomas R. Berger, a Canadian jurist and law professor, chaired the privately funded Alaska Native Review Commission. The charge of the Commission was to review the effect of the Alaska Native Claims Settlement Act of 1971 on the aboriginal and sovereign rights of Alaska Natives. Like the Hawaii Admission Act of 1959, ANCSA restructured Native and non-Native governmental relationships, leaving much of the responsibility over Native concerns in the hands of the State of Alaska.

Berger published Village Journey, the Report of the Alaska Native Review Commission, in 1985. Village Journey is an account of two years of the Commission's efforts to understand ANCSA's effects firsthand. Native witnesses from virtually every village in Alaska testified at scores of public hearings. Village Journey makes recommendations for political and legislative changes which the Commission considered necessary at a minimum to preserve the culture and lifestyle of Alaska's indigenous people.

Like Cohen, Berger saw firsthand the importance of sovereignty for Native people. The desire for self-government among Native people stems not from a disrespect or arrogance for non-Native society, but from a primal difference which expresses itself culturally, linguistically and religiously. The disrespect of Native people for the dominant society derives if at all from a sense of futility, as Berger captured so eloquently:

> Most Native peoples have no wish to assimilate. They have refused to be proletarianized. Their fierce desire to retain their own culture can onlyintensify as industry, technology, and communications forge a more deeply pervasive mass culture, excluding diversity of every kind. Native peoples the world over fear that, without political autonomy and their own land-based economy, they must be overwhelmed, facing a future that would have no place for the values they have always cherished. Native peoples everywhere insist that their own culture is still the vital force in their lives; the one fixed point in a changing world is their identity as Natives.

And like Cohen, Berger understood that "getting out of the way" does not equate with benign neglect. "The relationship the peoples of the Fourth World[1] seek, once achieved, cannot be carried on at arm's length; they must live side by side and interact within the dominant society. . . . Enclaves of indigenous peoples who live within a nation's boundaries cannot fit neatly into a standard pattern for decolonization." Village Journey, p. 178.

In sum, Berger, like Cohen, recognized the fundamental necessity of respecting the differences in Native people and their cultures through self-government.

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[1] *Berger defines the "Fourth World" as "the condition and the claims of indigenous peoples who are locked into nations they can never hope to rule." Village Journey, p. 176.*

> If governments continue in their efforts to force Native societies into molds that we have cast, I believe they will continue to fail. No tidy bureaucratic plan of action for Native people can have any chance of success unless it takes into account the determination of Native peoples to remain themselves. Their determination to retain their own cultures and their own lands does not mean that they wish to return to the past, it means they refuse to let their future be dictated by others. Because Native peoples have accepted a dominant society' technology does not mean they should learn in school no language except that of the dominant society, learn no history but that of the dominant society, and be governed by no institutions but those of the dominant society. The right of Native peoples to their own distinct place in the contemporary life of the larger nation must be affirmed. At the same time, they must have full access to the social, economic, and political institutions of the dominant society.

It is with this perspective as a backdrop that we now make the following specific recommendations concerning an appropriate response by the United States Government to the 1893 overthrow of the Hawaiian Monarchy.

Specific Legislative Recommendations

To begin the process of restoring to Hawaiians their right of self-governance, the Native American Rights Fund makes the following recommendations.

We believe that the 1983 Native Hawaiians Study Commission Report, which found insufficient evidence of illegal conduct by the United States Government in the 1893 overthrow of the Hawaiian Monarchy, is seriously flawed, politically motivated, and wrong. As a first alternative we believe that it is unnecessary to once again go through the lengthy Commission process to repudiate the 1983 Report; we believe Congress can make express findings to this effect through the normal legislative process.

In short, the Senate Select Committee on Indian Affairs should commence work now on a Native Hawaiian Claims Settlement Act. The Act should contain the following major provisions:

1. A repudiation of the 1983 Commission Report, and an admission of the wrongful conduct by the United States Government resulting in the overthrow of the Hawaiian Monarchy.

2. A formal apology to Queen Liliuokalani on behalf of the United States for the illegal overthrow of the Monarchy.

3. The return of a land base to a duly constituted government of the Nation of Hawaii. Such land base could include Section 5(f) lands, Hawaiian Home Lands, the Island of Kahoolawe, other federal lands (National Park Service, Defense Department etc.) and identified tracts of state lands.

4. The recognition of the sovereign power and authority of the Government of the Nation of Hawaii. The actual scope of the recognized sovereign powers would be the subject of negotiations between the United States and Hawaiian Native representatives.

5. Recognition and protection of the subsistence and commercial hunting, fishing, gathering (including beach access), cultural and religious rights of Native Hawaiians, and the legitimate exercise of sovereign powers over such rights. Such rights are necessary to maintain the unique indigenous way of life of the Hawaiian people.

6. A cash payment to make reparation for the 1893 overthrow of the Hawaiian Monarchy.

Moreover, the idea of a Congressional referral of Hawaiian Native claims to the U.S. Court of Claims is troublesome. The numerous pitfalls identified in the 6 July 1988 Memorandum from the Congressional Research Service of the Library of Congress to this Committee (Attention: Lurline McGregor) are sufficient to reject this option. The lack of an avenue of appeal into the Federal courts of appeals, standing alone, is especially problematic. Moreover, we see res judicata problems with bringing these claims before the Court of Claims. See Liliuokalani v. United States, 45 Ct.Cl. 418 (1910).

B. Alternatively, if the Committee or the Congress rejects this first recommendation, we urge that the Committee press for the establishment of a new Study Commission, to be appointed either by Congress or the President. The Commission should include Native Hawaiian representatives, as well as scholars in the fields of Native sovereignty and international law, as well as political representatives. The Commission should be given a life of fixed duration (1-2 years), adequately funded and staffed ($5 million per year), and charged with developing a legislative proposal to address the six points set out in A, above. More specifically, the Commission should be directed to focus on the following points:

1. An inventory of suitable lands for a land base for the Nation of Hawaii.

2. The scope of sovereign powers which the United States would recognize in the Nation of Hawaii.

3. An inventory of present and future needs of Hawaiian Natives pertaining to subsistence and commercial hunting, fishing and gathering rights, including protection of necessary habitat to pursue these activities. In addition, recommendations would be made pertaining to protection of land areas necessary for the exercise of important cultural and religious traditions.

4. A suitable cash payment.

To reemphasize, the Commission's ultimate task would be to develop and factually support a legislative packagedealing with each of the Hawaiian sovereignty issues set forth above. This package would then form the basis for a Hawaiian Native Restoration Act, to be introduced in both Houses of Congress.

Conclusion

Over the course of the next few months and years everyone who has been and who will become swept up in the Hawaiian Native Sovereignty Movement will pause from time to time to take stock of the Movement's significance for the Hawaiian people and indeed for all of humankind. I firmly believe that each of us can already feel that there are larger forces at play here. In some respects the Hawaiian Native Movement carries its own inertia, but it is also unmistakable part of a much larger tide of events sweeping the world. Out of this tide of events will emerge a new harmony between people of White and Brown or Red skin, a balance in which we respect each-other for our differences as much as for our similarities. In this way what we are all about here is simply working together to restore that harmony and balance.

We must all burn these words of Thomas Berger into our consciousness: "The problems are now manifest; the means of resolving them are already at hand. All that is needed is will, good will." Village Journey, p. 183.

Mr. Chairman and members of the Committee, on behalf of the Native American Rights Fund I want to thank you for this opportunity to testify. I would be happy to answer any questions you might have.

THE IDEA OF SOVEREIGNTY: NATIVE PEOPLES, THEIR LANDS, AND THEIR DREAMS

Professor Charles F. Wilkinson
School of Law
University of Colorado

Native Hawaiian Rights Conference
Honolulu
August 5, 1988

Before beginning my formal talk, I would like to make these brief comments.

First, I want to thank you from the bottom of my heart for having me here. I think that I, and my colleagues from the Mainland who are here today, feel joy at being in Hawaii for considerably different reasons than do most of the seemingly countless people who come here each year. I am moved by the physical aspects of Hawaii -- I think no one could be immune from that -- but I am ultimately stirred by something different and deeper. What has touched my soul is the Hawaiian people, your warmth, your spirit, your cause, your mana. So I thank you, more than I could ever fully say, for the great honor and privilege of being with you today.

Second, I want you to know how sensitive I am -- as, I think, is the case with all of us who have come over -- to the fact that you have complex historical and contemporary problems that call for unique approaches and solutions. It will not do -- absolutely will not do -- simply to transplant approaches from the Mainland to Hawaii. Thus my references to developments from the Mainland are offered only with the belief that in some cases you can take very general legal and constitutional tools and adapt them to your special circumstances, much as you have already done by using Congress and the federal courts as levers to provide solutions to your highly individualized situation.

Third, I will make these preliminary comments about the topic of my talk, sovereignty. Like every one of you, I am ultimately a practical person and, frankly, I am not much interested in theory except when it has hard, on-the-ground results. In that spirit, I will say without any equivocation that Hawaiian Native sovereignty -- your right to a substantial land base and to control the destiny of your people -- is no abstraction. It can happen -- it absolutely can happen -- if you choose to make it happen. In a similar vein, I hope that what I have to say will help dispel the idea argued by some that Native Hawaiian sovereignty is somehow radical. Directly to the contrary, your sovereign rights are profoundly traditional and fully supported by a dignified, well-respected body of legal, political, and philosophical thought that has represented the mainstream of European and American thinking from the time of Francisco de Victoria in the early 1500's right through August, 1988.

Finally, I will add this personal note. I give quite a number of public lectures on issues that I care deeply about -- Native rights, federal public lands, water, wilderness, development in the American West, and what I call an ethic of place, the general idea that our society needs to do a much better job of protecting distinctive places and cultures.

Each year, I find that one talk emerges as my own favorite talk of the whole year, the one that is most important to me personally. This year this talk is for me my favorite public occasion. The reasons for that follow from what I have already said: your ideals, your respect for the land, your personal grace and warmth, and your cause embody the things that I believe to be the highest and best calling of society.

As a result, I very much hope that my following remarks will be of some use to you.

Since the end of the Second World War, and especially during the last generation, Native peoples the world over have engaged in one of the most stirring and profound movements in all of global public policy. It is a movement born of many things but fundamentally it is charged by a deeply-held insistence to preserve their identities as discrete peoples; to preserve the distinctive qualities of the geographic places from which they arose; and to maintain, to some significant degree, control over their political, economic, and cultural destinies.

This movement is carried aloft by those objectives, those dreams. The movement is also in significant part defensive. It seeks to defend against economic oppression -- against the dark, exploitive side of capitalism that grinds under lands and resources and peoples. The worldwide Native movement also seeks to defend against racism, the malignancy that such a great part of the majority society denies but that every person of color, every Native person, must take to bed each evening and awake to each new morning. And the movement seeks to defend against religious oppression that has mindlessly sought to stamp out Native religions holding beautiful, lilting ideas that sustain their proponents and inspire all spiritual people who take the time to listen.

The worldwide Native movement has those goals and seeks to barricade against those things. But, underlying it all is an even deeper thing. It is a belief that this nation and this world are becoming too homogeneous, too gray; that the pressures for sameness are overbearing; and that those forces are destructive of some of the finest qualities of civilization. For to be human is to be creative and to be creative is to search out differentness and distinctiveness, to make this brief human existence a kaleidoscope of individuality and mystery and color.

The forces that would make us a nation of just one culture would deny these things. Native cultures would celebrate those things by standing for vibrant gods that answer only their prayers; for bright ceremonies that exist only in their places; for traditions, rules, and laws that they themselves have set; for a tie with nature -- with her waters, mountains, magma, forests, and animals -- that is respectful, that is built of awe, not arrogance; and for a slow and easy and humane and caring -- again, a respectful -- way of dealing with other humans.

Those things are not phony or romantic or just talk. They are real things, they are great ideas that must remain in the theater of the intellect -- ideas as great and distinguished as the scientific method or the free market or democracy itself.

And, remember, the ideas behind the modern Native movement ultimately call out to our genus and species to realize the greatest capabilities of humanity -- the capabilities that only human beings possess -- the ability to learn from the far back, to plan wisely for the far ahead, and to invent, to create. The Native movement stands for the very highest: it asks that we fulfill ourselves.

I have spoken of the Native movement as though it were monolithic, as though it were one integrated thing, but of course it is not. The traditions and frustrations and dreams can be painted on the same broad canvas but, by definition -- because Natives stand for individuality and creativity -- each Native people may be related to one worldwide struggle but each Native people is also separate. While there is unquestionably a global movement and unquestionably a national movement, and while each Native people can gain sustenance from those broad movements, there are also countless individual movements of Native peoples. Thus one must give careful attention to the circumstances of each Native people, whether in the hundreds of tropical islands in the South Pacific that were the home of your ancestors; the Maori communities of New Zealand; the vast, high desert of the aborigines of interior Australia; the pockets of indigenous self-determination in China and Russia; the brutal coast of Nicaragua; the far frozen-over back country of Canada; the deep woodland and river country of the Menominee in Wisconsin; or the tundra of bush Alaska.

Each has its own individual story and dreams and set of circumstances. So, too, of course, is there a special story here in the magic place -- the magic set of places -- that has brought us here, the rain forests of Kauai; the bombed-out but still sacred hills of Kahoolawe; the spiritual places of Pele; and many others. It is these places that bring us here. They are, to be sure, set in a national and even global context, a context that we cannot ignore because it can give us fuel. But it is the places of your Hawaii that bring us here.

The topic of my talk, and of a good part of this conference, is Native sovereignty. I would like to take a few minutes to discuss the notion of sovereignty as it developed in Europe; American Indian tribal sovereignty as it has played out in modern times on the Mainland; and the applicability of the idea of sovereignty to Hawaii.

Many of you have a good sense of the classic debates over sovereignty and how hopelessly metaphysical those debates were. The phrase "how many angels are there on the head of a pin" must have been invented to describe the convoluted body of literature involving sovereignty. Beginning with the 16th-century Frenchman Jean Bodin, philosophers and theologians went through great intellectual contortions to identify the specific place where ultimate, complete authority resided. Some said God. Others said the King. Still others said -- and this was getting risqué for the time -- that ultimate power resided in the people. But the touchstone for the classical notion of sovereignty was that The Sovereign -- whoever or whatever that was -- had to possess absolute power. Thus a person regularly hears today, when the subject of Native sovereignty is raised, the rejoinder that no Native government is a sovereign because it does not have absolute power.

But the fact is that we regularly use the word sovereignty today and we use it in a way markedly different from the classical definition. Of course Native governments do not possess absolute power. Neither does the City of Honolulu or the City of New York, the State of Hawaii or the State of New York, the nation of Luxembourg or the Republic of Mexico, or, for that matter, the United States of America or the Union of Soviet Socialist Republics. None of them possesses complete power -- world politics and internal national politics are far too complicated for that -- yet we refer to all of them as sovereigns. In doing so, we have moved beyond the angels-on-the-head-of-a-pin notion of absolutist sovereignty recognized by long-ago European academics and implicitly recognize what Thomas Jefferson recognized when he said that sovereignty in its absolutist sense was "an idea belonging to the other side of the Atlantic." Today, we intuitively understand that sovereignty simply refers to an entity that possesses governmental powers. The working dictionary definition of sovereign is "an independent government."

A sovereign is a national, state, city, county, or Native government that can make laws and enforce them. Some sovereigns -- such as Russia -- have enormous power. They have nearly all of the possible aspects of sovereignty. Other sovereigns -- such as the City of Lahaina or a rural county in Iowa -- possess relatively few of the total sticks in the bundle that a sovereign could possess. Others -- one might give as examples the City of Honolulu or the Navajo Nation -- are somewhere in between. But all of them share important things in common. They are not merely corporations or some kind of voluntary organization, such as a social club. They can make laws and enforce them.

Sovereignty, therefore, is easy to define in the real world. When one parses sovereignty out in this manner, there is nothing mystical or extraordinary about it. At the same time, however, sovereignty does have an elevated and dignified, almost mystical, quality about it. The reason is that sovereignty means power and when a people bands together to exercise its sovereignty that people is empowered. And the fact is that political power is precisely the thing that majority societies have always been least willing to accord to minorities. The political questions asked by minorities and the majority's answers have always been much the same. Market participation? Sure. Welfare and education benefits? All right. Freedom of speech and freedom of the press? OK. The right to vote in your elections and proportional representation in your governments? Well, let's think about that -- no, we can arrange that . . . after a while. Our own independent sovereignty with legislatures, courts, and authority over members of your majority society who come within our territory? At this point, there is no one left to answer because everyone has headed for the door.

This is why the accomplishments of American Indians on the Mainland during the last quarter of a century have been so remarkable. Yes, they have established some important rights to federal benefits for education, health, and economic development. Yes, they have won back a considerable amount of land. Yes, they have established important rights to natural resources, even to natural resources so important as Pacific salmon in the Northwest and water in the Southwest.

Far and away the greatest achievement, however, has been the attainment of political power. The overriding point of constitutional law and political science made by the United States Supreme Court in modern times is that there are three -- not two, as we all were taught from grade school on -- there are three sovereigns in our federal constitution system: the federal government, the states, and Native governments. American Indian tribes not only own their reservations, they rule them. Tribal laws govern land use, hunting, fishing, religious exercise, environmental protection, economic development, marriage, divorce, and adoption and custody of children. Indian tribes can tax in order to raise revenue. They have administrative agencies to regulate natural resource use, zoning, and numerous other activities. They have police and courts to enforce the laws. All of this has to do with political power and cultural values, for a people's highest values are lodged in their laws. In Indian country, the dominant laws are tribal laws, not state laws, and they are enforced by tribal officials, not by state officials.

In no sense do I mean to overstate this. There are seemingly intractable problems in Indian country. Income is low and unemployment is high -- not uncommonly reaching 40 or 50 percent. Alcoholism and a great many other diseases take dead aim on Indian people. And there are plenty of reminders that Indian sovereignty is not complete, that Indian tribes are "domestic dependent nations." The Bureau of Indian Affairs continues to see its authority diminish each year, but the BIA presence in Indian country is still far greater than it ought to be; there are still some reservations in which the decisions of the Bureau mean more than the rulings of the tribal council. There are tribes still operating today under constitutions, foisted upon them by the BIA during the 1930's, that are antagonistic to traditional forms of governing. There are a number of federal statutes restricting the use of tribal land, resources, and funds that date from the era when Indian people were considered incompetent and the BIA was considered their guardian. Those archaic laws ought to be repealed or modified, but they have not been.

There are some significant limits on tribal powers. The Supreme Court has held that Indian tribes lack the authority to exercise criminal jurisdiction over non-Indians, although tribes do possess broad civil jurisdiction over non-Indians in matters such as hunting and fishing regulation, taxation, zoning, and many other areas. Congress continues to have extensive power within Indian country -- not literally "plenary," which means absolute, but federal power is broad indeed. Further, even the states continue to reach their tentacles onto reservations in regard to some issues.

But, even considering these limitations, the rise of Native sovereignty on the Mainland has been a real thing and a powerful thing. State power in Indian country is minimal. Indian lobbyists in Washington, D.C., are able and numerous, and have been able to fend off the confiscatory proposals that continue to be made. Most basically, Indian tribes have been able to turn the historical use of federal power directly around: whereas in the past Congress had used its broad powers to strip Indian tribes of their rights, in modern times the broad federal power has been used by Indian people to pass progressive legislation codifying Indian-drafted initiatives to promote Indian health, education, resources, economic development, and self-government.

Sovereignty, as exercised by Indians on the Mainland, has almost certainly been a highly productive thing for them. Still, American Indians ask questions and Native Hawaiians would ask them even louder and more pointedly. Most basically, "sovereignty" is a word that comes from Europe, not from America, and certainly not from Native cultures. It bears heavy connotations of a European-style monarchy, even of a European-style God. How can it fit with Native cultures, law ways, and religions? I have asked these questions and I am sure that many of you have.

Let me briefly pass along to you the answers that have been most satisfying to me. They were given to me by two of the people whom I respect most.

Delbert Frank has long been a tribal council member of the Warm Springs Tribe in central Oregon. They are a fishing people and -- just as much of your lives revolve around the ocean -- their life has always revolved around the great runs of salmon and steelhead on the Columbia River and its tributaries such as the Deschutes, which forms the northeastern border of the Warm Springs reservation. Last month Delbert and I spent a long day together talking about his people and about sovereignty. In the final analysis, as Delbert explained it to me, this new word sovereignty is the modern embodiment of a concept that his people have believed in for millennia. Tommy Thompson, the tribal leader who had ultimate responsibility for the regulation of fishing at the traditional tribal stations on the Columbia River, instructed Delbert on the old tribal ways. The most basic concept was embodied in the Sahaptin phrase "tee-cha-meeng-mee sin-wit na-mee ah-wa-ta-man-wit." Delbert explained to me that this is a very complex set of thoughts, but that it basically means "at the time of creation the Creator placed us in this land and He gave us the voice of this land and that is our law." As Tommy Thompson explained it to Delbert, and as Delbert explained it to me, this is the phrase that explains how the law rose up from the land and how all of the people of the land must obey the laws of the Creator. And from that complex set of thoughts has come a great many tribal rules and strictures and obligations that constitute the basic set of mores of the Warm Springs people. The word may be different, but that is Native sovereignty, real Native sovereignty.

David Warren is a member of the Santa Clara Pueblo, located northwest of Santa Fe along the Rio Grande River. His people, like Native people everywhere, are very place-oriented and they have obligations to that place. Thus a traditional Santa Claran would say that he or she was a person from "Ka-po o-wen-geh," which means "the place near the willows where the hearth of the community is," probably meaning near the Rio Grande. Tewa, the Native language of the Santa Clarans, also has a word that embraces the idea of sovereignty within it. "Po-wa-ha" literally means "the breath," but, as David explains it to me, it is so symbolic, so metaphorical, so powerful, that it is both a song and a prayer to the Santa Clarans and its more expanded meaning is "in and over the hills and through the breath your authority returns and comes to you again."

Thus, in traditional Santa Clara dances, the lead dancers will scoop up the air in front of them with both hands and bring it into their faces. By doing that, they are gathering in the breath of authority and power -- not to dominate the earth, but rather to live in harmony with it and to replenish and refurbish the earth. Religious leaders who receive po-wa-ha are custodians of the authority and possess what is essentially a theocratic authority. Po-wa-ha carries with it a set of ideas and required acts and any civil government must be complementary with those acts and ideas.

David Warren is a careful, sophisticated person and he roots out the differences between European and traditional Native thinking. He believes that the structure of aboriginal living is so tied to clan and family relationships and to real will power that a European phrase such as "sovereignty" or even "government" doesn't really fit. But, on balance, he believes that po-wa-ha does explain the ultimate authority of his people and that, whatever terminology is used, it embodies some notion of Santa Claran self-determination.

Thus sovereignty, as conceived of by Europeans and as adapted by federal and state governments, is not exactly the same thing as the rich, full, set of cultural and religious ideas and mores explained to me by Delbert Frank and David Warren. Among other things, the law ways of Native people mix religion and secular obligations in a way that European governments are simply not accustomed to doing. In addition, Native decision making is accomplished by means other than one-person, one-vote. Some decisions are made by less than a majority -- by a leader or leaders, usually religious people -- while other decisions are made by more than a majority -- by a full consensus.

But an interesting thing has happened to sovereignty. Native people have breathed new life into it, just as Thomas Jefferson and other Americans breathed new life into the European concept of sovereignty. Native governments have taken the old European concept and infused it with their close-to-the-ground vision -- with the breath, as David Warren or another Santa Claran might put it -- and have rejuvenated sovereignty and taken it to new levels.

Sovereignty, as practiced by many Indian tribes, has proved to be exceedingly flexible. Importantly, Native governments are not bound by the establishment of religion clause of the Constitution: some Native governments are theocracies -- the only operating theocracies within the borders of the United States of America. Further, Native governments need not have a republican form of government and thus are not bound by one-person, one-vote: they can make decisions through religious or hereditary leaders, or by consensus. Understood in this manner, sovereignty is a rough but useful concept that can encompass the full range of Native law ways and mores because Native people have so enriched the idea of sovereignty during the last quarter of a century.

The idea of sovereignty, therefore, has imposed no shackles on Native people because they have rejuvenated the old doctrine. They have made it broader and better. They have infused and reconstructed sovereignty with their own traditions and creativity, but they have employed the word as a useful means of communicating the high status of Native governments to other governments. Indian tribes, therefore, have altered traditional notions of sovereignty to encompass their own traditions but, at the same time, have used the phrase sovereignty as a shorthand way to explain that they belong within the community of governments. And that recognition has brought with it the political power that majority societies have always accorded to Native people so begrudgingly.

Let us ask, then, how all of this applies to Hawaiian Natives.

First, there is no principled argument that Hawaiian Natives cannot assume sovereign powers within the federal constitutional system. Hawaiian Natives are culturally distinct from Indians on the Mainland, but the constitutional authority of Congress to deal with aboriginal peoples does not extend to Indians: it extends to Natives. Thus, for example, Congress has recognized Aleuts and Eskimos even though they are not ethnologically Indians. The legal requirement for congressional recognition, and for Native sovereign status, is simply that (1) the group have some ancestors who lived in what is now the United States before discovery by Europeans and (2) the group be a "people distinct from others." Hawaiian Natives meet those requirements and there can be no reasoned dispute about it.

Second, as an historical and equitable matter, there are important aspects in which Hawaiian Natives have literally the strongest claim to sovereignty of any indigenous group in the United States. As recently as 1893, Hawaiian Natives exercised sovereign authority. The sovereign authority exercised by your Kingdom, however, was not as a "domestic dependent nation," as Chief Justice John Marshall described Indian tribes on the Mainland. Rather, as you well know, the Kingdom of Hawaii was a complete international sovereign. Your Kingdom made formal treaties with numerous nations and acted as a sovereign in the full international sense. To put it another way, had there been a United Nations at the time, the Kingdom of Hawaii would have been a full participating member in it.

Like you, I would wish with all my heart that you could assume once again the full international sovereign status which you once held and to which you are, in my view, morally entitled. This would be manifested, I suppose, by membership in the U.N. Unfortunately, such a status may not be realistically achievable. You know the bare facts as well as I do. Complete international sovereign status depends ultimately not upon law or morality but upon power. The United States of America is infinitely more powerful than any force that Hawaiian Natives could assemble. And the United States is simply not going to relinquish this key military outpost in the Pacific. You are not alone in this. If the state of Hawaii sought to secede, that movement too would be denied.

But, whether or not true international sovereignty is beyond your grasp, I urge you to proceed together. Do not at this point be divided by labels. International sovereignty; recognition of your sovereignty by the federal government; perhaps even recognition of your sovereignty by the state of Hawaii -- any of these mechanisms can assure you a genuinely powerful degree of sovereignty if you structure it right. You can build a substantial land base comprised of villages, beach access points, and inland regions where your laws -- not the laws of the State of Hawaii or of non-Natives -- where your laws as to wise resource use, education, culture, religion, economic development will control.

It follows from what I have already said that sovereignty in your terms would be separate from, and different than, the special law ways, traditions, and dreams. You can build a sovereignty that is truly Native Hawaiian sovereignty, unrelated to any structures that exist on the Mainland.

Let me give a few brief examples of the kind of flexibility that is available to you. First, and foremost, you can structure a sovereignty that simply has no room for the Bureau of Indian Affairs in it. Your legislation can -- and probably should -- provide that the Bureau of Indian Affairs will never set foot in Hawaii. Second, you can with your own ingenuity resolve one of your basic problems, which is: how much power should go to an island-wide nation and how much power should go to each island? As I understand your history, you traditionally had a federal system. Chiefs on each ahupuaa and island had basic authority but there was also an island-wide kingdom. You could replicate that kind of Native federal system by having a national legislature with specific powers as well as island legislatures which themselves would have specific powers. There are variants within such a federal framework. If you wish, you can create a relatively powerful centralized national government, or you can delegate most power out to the islands. Or you can go still further and have no island-wide government at all. You can simply organize separate, wholly independent island governments. You can organize around one or several of the fine grass-roots organizations now in existence or you can form a new one. The choice is yours. Sovereignty is a broad concept that allows you to be creative and flexible.

And let me underscore one other point. There can be no reasoned argument that the assertion of your sovereignty would not add to your total power. Even if you want to exercise some corporate powers and to pursue some degree of economic development, your sovereign powers would supplement the corporate powers. No lawyer can properly advise you that a corporate entity has as much power as an entity that is both corporate and sovereign. Sovereignty can empower you many times over.

Any actual, working sovereignty must be tied to a Native land base. It is easy in theory to rhapsodize about sovereign powers operating without land but in the real world such talk is an illusion.

Hand-in-hand with your movement for sovereignty must go your movement to expand dramatically the Hawaiian Native land base by activating the Hawaiian Homelands trust, by obtaining a fair share of the ceded lands trust, by reacquiring Kahoolawe, and, as events begin to move quickly on reparations, by insisting that reparations legislation must include the return of a substantial amount of Native lands. By doing that you will respond to the overriding point made by the research of Dr. Naleen Andrade and by the experience of Dr. Emmett Aluli and Dr. Kekuni Blaisdell -- that the loss of Native land in Hawaii has caused a wide range of deep-seated emotional and medical problems that must be borne by your people. That set of problems will begin to be resolved when, and only when, you achieve your rightful return of land and control over that land.

Some ask -- many of you ask -- "how can we achieve these things when we are not united?" The answer is that you are united on the key issue, that you share a common sense, however general, of what things bind you together and of what your people ought to be. You have a shared sense of a sacred mission. I understand that you have divisions, in some cases deep divisions, on the basis of one island against another, of one personality against another, of one tactical approach against another. But those kinds of divisions are found within every sovereign. Does Chicago have divisions? Does Illinois? Does the United States of America? Of course they do, but each of those sovereigns resolves those differences -- many of which are much deeper than yours -- within a working governmental structure.

Do not allow your divisions to be an excuse for inaction. Agree that you are a people. Agree that, whatever your differences, it is infinitely more preferable for Native Hawaiians rather than the state to own land and legislate over it. Then agree that you will agree on a governmental structure and a political strategy for land restoration and sovereignty. Agree, in other words, to stay in the same room until you reach consensus. Then use the disparate ideas within your numbers as a source of strength to build an open, diverse, humane governmental structure that respects the ideas of its minority components. By agreeing that you are a sovereign nation, and by agreeing to resolve disagreements within the nation, you can build a strategy and a coalition that will achieve your sacred mission.

When you have built that coalition, which you can do within a few hard years, you will have created understanding. You will have proved the central point to the public. You will have proved that it is not just a bitter irony, although surely it is that, but that it is also irresponsible and irrational rhetoric to brand native sovereignty as radical and extreme -- native sovereignty, a set of ideas and dreams that has graced this earth since the twilight of aboriginal times; a set of ideas and dreams that has been embraced by the Nixon-Reagan Supreme Court during the 1980's; a set of ideas and dreams that flourished on these very islands just a short century ago until displaced by a coup that really was radical and extreme in the true sense.

I know that what I have said is general and I hope you appreciate that a talk like this necessarily must be general. But, by being general about your goals and your ability to achieve them, I do not mean to be simplistic or to make it sound that your road is an easy one. It will not be. You have a great deal to learn about how to lobby in Congress, which is the body that holds the ultimate authority to assist you. Powerful interests, literally some of the most powerful interests in the world, among them multinational corporations and the Pentagon, will oppose you every step of the way. It will be an enervating, gut-wrenching process. There will be too many meetings, too many trips, too much haggling over interminable details and technicalities, and, if the truth be told, too many compromises. But you can do it if you have the will to do it. Other Native groups have done somewhat similar things, although in my view your situation is more complex and the obstacles facing you more daunting.

But you have advantages they did not. Yes, your governor and your senators are politicians and must respond to other constituent groups, but can you realistically imagine a time when you would have three better people in their key positions at once? You have other advantages that will count for far more. You have numbers -- you have the highest percentage of Native people in any state as well as the largest indigenous population, in absolute numbers, of any state. You have, as an equitable cause, raw wrongs that cry out to be corrected. You have the pressure of time to rally around: things are moving very, very fast on these islands, things have really winched up here. And most of all -- by far, most of all -- you have yourselves, a vibrant, warm, traditional culture. You have your mana. You are a people.

I believe that there are times in history when peoples are called. Your people from the South Seas a millenium ago. The Navajos across the land bridge. The French during the gushing up of the Renaissance. America in 1776. Israel in 1948. The Menominee in 1969.

You must decide whether this is your time, although I will tell you that I think it is. If you believe that this is your time, seize the time. Seize it not for yourselves but for all of those who stand under your arching rainbow of time. You stand at midpoint under the rainbow and you must look out in both directions. At one end of the rainbow are those long-gone, those who first came here, all of your kapuna, people who have given you hundreds of generations of wisdom but who now look to you for wisdom. At the other far end of the rainbow of time are many hundreds of thousands and more who have yet to be born, who look up to you with their round, brown, inquiring eyes and implore you to fulfill their possibilities and their dreams. Look into the eyes of all the people at both ends of the rainbow of time and decide whether, at this pivotal time in your history, you will set aside your differences and take the necessary actions to realize your destiny and theirs by restoring your sacred lands; by reinstituting your sacred sovereignty; and by fulfilling your sacred dreams.

Mahalo.

Testimony of John I. Simeona, Co-Founder &
Chairman, Hui Maka Kilo Inc.

Before the Senate Select Committee on Indians Affairs
at Senator Inouye's Office

Senator Inouye, aloha auinala, as one of the founders and charter member and president of Hui Maka Kilo. Inc., and in behalf of Hui Maka Kilo Inc., I would like to say mahalo a nui loa for this special priviledge of giving testimony in your office.

My name is John I Simeona, native Hawaiian, born in Keaukaha, Hilo, Hawaii on Hawaiian Homesteades land. Keaukaha has taught me many things love of my parentss, the love of my native land, Hawaii and my heritage as a native Hawaiian, and the love for a country called AMERICA.

I am a father of 7 boys, and 6 girls, of whom I can be proud of. They are all native Hawaiians. They are situated in all parts of America and Hawaii. I am also proud that I am a native Hawaiian and live on homesteads land. I am a retired supervisor at Pearl Harbor from the U.S. Government, and now I am involved in community-awareness. I am proud that I can speak the Hawaiian language, read and write Hawaiian. I am proud of my American citizenship. I am proud enough to say that I served my country in Europe during the second world war.

Native Hawaiians are the most blessed people in the United State as well as the State of Hawaii. Our children have a rare priviledge of been able to apply for homesteades, farm lands, pastorial lands with the Hawaiian Homes. While others of the same age of other nationality cannot. As native Hawaiians we are recipients of the General Funds of the State of Hawaii, and as well as the benefits of the ceded lands revenues. As native Hawaiians we we have the same priviledge of attending and obtaining an education offered by the State of Hawaii's educational system.

Today some of our native Hawaiians and Hawaiians do not appreciate this choice of special priviledges, we murmur and grumble. Members of Hui Maka Kilo Inc. cooperation feels differently for we are thankful for the freeedoms which are ours and that of our children. As native Hawaiians yes we agree with our people of Hawaiian ancestry that the overthrow of the Queen and her government was illegal and that there should be an admittance made public by the United States of America regarding it's accessory to the overthrow of the Queen and her government.

Yes, we agree that an apology is n order and that it must be made by the United States of America and that it be done publicly. We also would like to have an apology be made publicly by the instigators of the overthrow or made by their survivors to the Hawaiian people, namely L.A. Thurston, Henry Waterhouse, W.R. Castle, W.O. Smith, E.F. Judd, P.C. jones, W.C. Wilder, S.B. Dole, Cecil Brown, S.M. Damon, C. Bolte, John Emmeluth, J.H. Soper, and C. L. Carter.

We do not accept nor do we suggest any of the options as so recommended by you namely: (1) Authorized citizens to refer the Hawaiian claims question to the U.S. Claims Court through Senate resolution, (2) To create a congressioal-appointed commission to study the Historial Events, surrounding the overthrow of the Hawaiian Monachy, (3) that Congress could pass legislation to established another presidential commission.

It is now my responsibility, to introduce to you our panel who will give testimony and recommendations regarding reparations. First of all, we, Hui Maka Kilo Inc. agrees with all others that reparation is due the Hawaiians from that injustice of the Hawaiian, in that this injustice did deprived us Hawaiians of our Queen and our right to be a Nation amongst nations of the world.

Senator, you have before our statements and within that statements you have annex 1, which is titled "Reparation & Self-Government". Here on our panel we have Mr. Kepo'o, past president of Hui Maka Kilo Inc. and now advisor to the president, Mr. Frank Nobreiga, Kahu, Hui Maka Kilo Inc., and myself, John Simeona, president, Hui Maka Kilo Inc. Each of us will be speaking on each items as so indicated on annex 1.

Land Base................John Simeona

Revenues.................Arthur Kepo'o
Governing Agent

Religion.................Frank Nobreiga

Senator, when we, Hui Maka Kilo Inc., makes these recommendations to you and your committee, we would like to call your attentions to the present governmental set-up of the State of Hawaii and the United States of America, that there already built-in agencies from which we can draw out to satisfy reparation for the Hawaiian and also in matters pertaining to Self-government. This means that there is no need to form any other new agencies to be able to recieve this reparation. We would like at this time to say that the purpose of Hui Maka Kilo Inc. is to assist the Hawaiian Homes and the Office of Hawaiian Affairs in accomplishing their goals for the betterment of the native Hawaiians, who are actually the root of all Hawaiians. Once this has been accomplished, Hui Maka Kilo Inc. will than and only than close it's doors of business and work with the Hawaiian Government for the betterment of conditions for the Native Hawaiians.

In my paot of our presentation, which is square one on your annex, I will refer my remarks to "Land Base", will be later known as the council on Land Affairs. It has been recommended by others that the Hawaiian Government must have a land base and it was recommended in order to satisfy the problem, that all of the lands that were with the Hawaiian Government is to be return back to the Hawaiian Government. Well, we differ in that we are not asking nor are we recommending that all those lands be return back to the Hawaiians under reparations. This is our recommendations: (1) That those lands that are already purchased by legal titles etc., remains with it's owner or owners,. (2) That the ceded lands be the same and are remain with the State of Hawaii and shall be governed by the provisions as so legislated., (3) That the Hawaiian Homes Land Trust be given to the Hawaiian Home Commission in it's entrity, meaning that all 200,000 acres be return back into the Hawaiians Homes Land Trust. That all current leases of Hawaiian Homes Lands of which are leased by people, parties or otherwise, who are not of Native Hawaiians shall end at the date and time of the formation of the Hawaiian Government. That treaties be made by the Hawaiian Homes and the people, person or other wise regarding these leases, but all lands designated as Hawaiian Homes Land shall become the properties of the Hawaiian Homes and shall be a part of the Council of Land Affaiss in the Hawaiian Government. An important matter here, if there is to be self-government granted to the Hawaiians, we therefore, highly recommend that the Hawaiian homes be given it's freedom and become a part of the Hawaiian government. What it boils down to mean is that the State of Hawaii shall have no more juridistion over the Hawaiian Homes.

Also recommended within this recommendations is those lands that are considered of designated as historial sites and are of Hawaiian value is to be return and placed under the Hawaiian Homes, whose name will no longer be known as such, but as the Council of Land Affairs. Also it is recommended that where there are lands that have been designated to be of Hawaiian religious significant, shall be turn over to this Council of Lands Affairs and shall become a part of the Hawaiian Government.

This recommendation can now enable all native Hawaiians obtain lands and when all native Hawaiians have gotten their lands than and only than shall these lands be given to the Hawaiians.

Being that there shall be a Hawaiian Government so established as will be presented by Mr. Kepo'O, Hui Maka Kilo Inc., will legislate for the establishing of Hawaiian Habitate within the State of Hawaii, with the purpose of promoting and perpectuate the Hawaiian and also to presere it. It is propose by Hui Maka Kilo Inc., that those place of which have been given to Hui Maka Kilo Inc. to work and live on be designated as Hawaiian Habitate. They are namely Waikane Valley and Kukuopea in Kona on the island of Hawaii. We will also seek to establish those Hawaiian Homes lands at Kau, those lands near south point, Ka Lae.

Hawaiians needs places like this to do whatever they want to promote and to preserve their culture and not like that of P.C.C. There is no place in Hawaii at where, we can say is truly Hawaiian.

Testimony of Arthur F. Kepo'o,
Co-Founder, Advisor, Hui Maka
Kilo Inc.

Before the Senate Select Committee on Indians Affairs
at Senator Inouye's Office

Aloha auinala. Senator Inouye, Chairman of the Committee thank you for this opportunity of being able to testify in the important issues now before the Native Hawaiians and Hawaiians.

My name is Arthur F. Kepo'o, native Hawaiian, born and raised on Hawaiian Homesteades Lands in Keaukaha, Hilo, Hawaii. Proud of my Native Hawaiian birth of great Native Hawaiian parents, James E. Kepo'o and Helen Kaheiemauna Waipa. I am a proud American and proud of my citizenship in this State of Hawaii, serving my country and my island state in volunteering for Korea and Viet Nam. I thank God for the freedoms, opportunities and all of those goodies that is mines to enjoy here in this Country of freedoms.

Hawaii has been my home for the last 59 years and that is just how old I am today. Hawaii will always be my home, for as a Native Hawaiian with no other blood in me, I can go no wheres but here in Hawaii. Other races have other places to go, Japanese to Japan, Chinese to Chine, haoles to Continental United States and other places, and so with the others, but people like me, we can go no wheres, for we have no mother land that we can call our own, other than Hawaii.

Mr. Inouye, you have heard that just exactually what this little cooperation is all about, mainly we are to guide or at least try to guide the office of Hawaiian Affairs so that it can accomplished it's purposes and you will hear in my testimony and that of the panel that we really do support the office of Hawaiian affairs and the Hawaiian

Homes Act of 1920.

We, Hui Maka Kilo Inc., do not accept nor do we suggest nor do we recommend any of your options in solving the issue of monumental injustice of the Hawaiian people. But we present to you a solution to the problem at hand.

Other organization have given you their recommendations in the way of points, etc. They come and recommend that there be a public apology by the United States of America regarding their deeds or misdeeds of it's representatives at the time of the overthrow and subsequent to the overthrow of the monarchy. This we agree, but further request and demand that the same be ask of the following instigators, who were the ones that caused the overthrow to happened, had it not been for them, the United State of America would have not been a conspiracy to this dreadful act of injustice. That the following men or their survivors do as so requested, demands, ~~and~~ as so recommended:

L.A. Thurston, Henry Waterhouse, W.R. Castle, W.O. Smith, A.F. Judd, P.C. Jones, W.C. Wilder, S.B. Dole, Cecil Brown, S.M. Damon, C. [illegible]olte, John Emmeluth, J.H. Soper, and C.L. Carter.

Other organization have recommended in matters pertaining to restitution or reparation of monies to the amount of one billion dollars and a return of all ~~or not~~ of the lands to create a land bank for a sovereinty of self-government. These organizations does not defines just how it can be done nor how should it be done. We, the heads of Hui Maka Kilo Inc. comes before you with a proposed plan of which we feel, should the Congress and the Legislature of Hawaii meet tomorrow, the plan can be approved and be carried out immediately.

For the rest of my testimony I would like to base my comments on the annexes of which is a part of our testimony, namely: annex 1, 2, [redacted].

All of what materials or explanations that are within these annexes are already built into the system of the United States of America or within that of the State of Hawaii. This means that it will not take too much time and monies to reach a happy solution to that matter of reparation. I would like to say at this time that we, Hui Maka Kilo Inc. are in favor of and recommend reparation be made for that injustice dome and we further extent the burden of reparation be extended and be demanded of those men ~~of~~ whom we have just made mentioned of as instigators.

I would like at this time to refer my remarks to annex 1. The heading is Reparation & Self-Government. There four squares, each representing a part of the process of Hawaiian Self-Government. Each dependent on each other and strenghtening each other. Than we see at the top of these squares agencies of which they are part of or are influenced by the same.

Square one as was covered by Mr. John Simeona is about Land Base. Here we are not asking for all of the lands that belongs to the Kingdom at the time of injustice be returned back to the Hawaiian people, but only those lands as so indicated by Mr. John Simeona and than some. Here we are also recommending that the Hawaiian Homes be removed completely from it's ties with both the Federal and the State of Hawaii. This means that here we are speaking of self-governing and that the Chairman and it's commissioners be elected by the Native Hawaiians and Hawaiians.

Square two, of which I will explain refers to the Office of Revenue. In order for any self-governing project be sustained it must have monies, Therefore Hui Maka Kilo Inc. is recommending the following: (1) That the ceded lands remains in the hands or control of the State of Hawaii and that the revenues thereof be turned over to the Hawaiian Government as so prescribed by law, with the exception that the provisions of Section 4 of Article XII Hawaiian Affairs of the revised statues of Hawaii be adhered to it's meaning which is, "The lands granted to the State of Hawaii by the Admission Act, better known as the "Public Trust", shall be held by the State as a public Trust for Native Hawaiians and the general Public. This means that for every dollar recieved from this public trust be divided equally, 50 cents to the Native Hawaiians and 50 cents to the general public. (OHA has not recieved it's fair share since 1980. This figure would amount to approximately a retroactive payment of about $16 million owed to the Native Hawaiians by the State of Hawaii.

It is also recommended by Hui Maka Kilo Inc. that all of the Military Properties of which are ceded lands in a sense that they were Hawaiian Lands and when returned to the State of Hawaii, will be come a part of the ceded land bank, be returned to the Hawaiians. Our recommendation does not mean that we are to take the lands physically and remove the Armed Forces, but what we are saying here that on paper we become the land lords of these lands and that the United States of America lease the lands from the Hawaiians. These leases can liken to the leases on other countries lands. The leases can be as low a one cent per square foot or higher as so agreed by both parties. That these monies be handled by the Office of Revenue.

It is also the recommendation of Hui Maka Kilo Inc. that the island of Kahoolawe be return to the Hawaiians. It is also recommended that the island be still used as an invasion exercise area and a bombing area as is with the Pohakuloa area on the island of Hawaii. That those present restrictions be continued such as the historical sites or any other sites of historical concern of the Hawaiian people. It is recommended that a fee ~~is~~ be charge of the user by the Hawaiians for the purposes of bombing or invasion by the user. An example: Whenever any Country uses that island for bommbing exercises, they will be charge a fee of say one dollar per pound of bomb, or fifty cents per pound of vehicle or machized equipment or one-dollar per personnel used in the exercise. These monies when collected will be turned over to the Office of Revenue. Also after every action, the area must be police-up by the user.

The third square has to do with Governing Agent. Here we recommend that whenever and whereever there is a need for Governing of the Hawaiians, that the Office of Hawaiian Affairs be know as the Legislative, Executive and Judicial Bodies of the Hawaiians. Now there are amendments of which needs to be made such as the Trustees will no longer be called Trustees, nor will there be only nine of them. The Trustees will now be called Council of Chief and shall have as many chiefs as there are Hawaiian habitants or communities. These chief shall be elected by their respective habitants or communities. It shall be from th~~ese~~ 12 Council of Chief will the ranking chief be elected by ~~by~~ the Hawaiian people. For example: The high Chief, and others, each according to the rule of the Hawaiian and that all are elected.

The last square which is very important to the Hawaiians and has been in ancient times is the Religion. This religion we speak of and would like to recommend will be the true religion of Hawaii. This ofcourse will be remarked by Mr. Frank Nobriega.

In summation, Mr. Inouye, we have given you actually nothing new, for all that we have presented to you as our recommendations are built in the American System for the sake of the people. In the admission act, the ceded lands are mention, in the constitution of Hawaii the Hawaiian Homes is mentioned. In the revised laws of Hawaii the Office of Hawaiian Affairs is mentioned. In the revised laws of Hawaii the entitledments for the Native Hawaiians are mention. All in all we are not saying new things, all that we are doing is emphasizing them and strengthening them. One of the greatest power that the Hawaiians have now that is given by legislative power, recognized by the Courts of the United States, all the way up to the Supreme Court of the United States of America. There is no need for the Hawaiians to set-up a new agency, nor is there any need for the Hawaiians to set-up a special tribe so as to recieve the reparation in whatever form it comes. All that is neede for self-government is to have the Office of Hawaiian Affairs break it's ties with the State of Hawaii and that the Hawaiian Homes too, breaks it's ties from the State of Hawaii and the United States of America. But Hui Maka Kilo Inc. does not agree that we lose our American citizenship. That we retain our American citizenship with it's freedoms and benefits. For as a retired Army Officer, I will lose my pay and the benefits thereof. Also our senior citizens will lose all of their benefits, to mentioned a few social security. Yes, in order to maintain such freedoms and benefits, we must participate in what ever is American, such as paying taxes. But these shall be in contributions rather than individual taxing.

In conclusion, therefore, Mr. Inouye, we know that beyond any shadow of doubts that our recommendations are workable and that the expediating of the solving process of reparation can be accomplish. That we are to take each block one at a time. Therefore we have presented to you our time schedule. It is hoped that these recommendatiohs will assist you and you committee in solving this big issue. My last comment is that there are two things of which we can do in speeding up the process and they are: (1) Removing the Office of Hawaiian Affairs from the State of Hawaii and placing that office as the Hawaiian Government, and two the removal of the Hawaiian Homes from the State of Hawaii and placing it in the Hawaiian Government as the Office of Lands Affairs for the Hawaiians, and that as John Simeona has remarked, that all 200,000 acres of Lands be returned to the Hawaiian Homes.

May I again take this opportunity to thank you and your staff for your cooperation with us and especially to you for your great concern of the Hawaiian people. God continue to bless you. Aloha, a hui hou.

PREPARED STATEMENT OF CLARENCE KAMAI

To the Honorable Senator Daniel K. Inouye, and Members of the United States Senate Select Committee on Indian Affairs, Aloha, Aloha ke Akua (God is love) and with this love I come before this Body.

My name is Clarence Kamai, President of the Paukukalo Hawaiian Homestead on the island of Maui, father of 11 children and 26 grandchildren from a family of 13 members. This figures are expressed to denote the many lives involved with just one family.

The shortage of notification made it impossible for me to present a more concrete and factual report as required on the legal or illegal overthrow of The Hawaiian Government.

It is a FACT, that there had been a Hawaiian Government recognized by the world powers at the time, 1800 or thereabouts.

The question asked, what happened to that government? The answer, it had been "taken over." By whom? The American Govenment. The next question is Not Why? It is how? The historical records in songs, chants, and papers will answer the question, how?

Senator Inouye and Members of this Select Committee on Indian Affairs, I am very happy to read in the Maui News dated, Wednesday, August 24, 1988; Quote: A thorough and unbiased study of the historic events surrounding the overthrow must be done to replace the findings of the official report, Inouye said: Unquote. I agree with your statement Senator.

I thank God that you Senator Daniel K. Inouye is chairing this hearing, because of your tenaciousness for justice, as evidenced the past few months in Washington D.C. Yes, I thank God for you.

Again, I quote from the same dated Maui News, "Ways to pursue the claims include introducing a Senate resolution to refer the Hawaiian Claims to the U.S. Claims Court, establishing a congressionally appointed commission to study the 1893 overthrow, and urging the president to establish another presidentially appointed commission, Inouye said." Again dear Senator, I agree and thank you in advance of what you will be doing for the Native Hawaiians as defined in the Hawaiian Homes Commission Act, 1920, as amended.

Thank you Senator Inouye and Members of this Select Committee on Indian Affairs.

God help and guide you all on this very urgent and important issue.

Mahalo nui loa.

Testimony of David H. Getches,
Professor of Law, University of Colorado,
before the United States Senate Select Committee
on Indian Affairs
Honolulu, Hawaii
August 26, 1988

Chairman Inouye and Members of the Committee, thank you for the opportunity to present written testimony to the Committee. I applaud the Committee's attention to the issue of redress of Native Hawaiian claims.

My interest and involvement in the subject of the hearings goes back over 16 years. I was the founding director of the Native American Rights Fund (NARF), a national, nonprofit law firm serving Native Americans in cases of major significance. In the early 1970s, NARF was first contacted by lawyers and Native groups in Hawaii seeking advice and assistance. My publications include *Cases and Materials on Federal Indian Law* (with Wilkinson), a number of articles on Indian law, and I was on the editorial board of Felix Cohen's *Handbook of Federal Indian Law*. Many of those publications include treatment of legal issues concerning Native Hawaiians and the parallels that exist with other Native Americans. My writing, law teaching and consulting have led me frequently to those issues and many times have brought me to Hawaii.

I have been impressed by the similarities between the history and current problems of Native Hawaiians and those of American Indians. But I have been equally impressed with the lack of attention given to problems of Native Hawaiians by the United States Government. The political branches of the federal government have assumed some responsibility for the historical events that caused the present day distress of American Indians and Alaska Natives. It may be fair to criticize the approach of the United States to Indian policy as often ungenerous, inappropriate, and even duplicitous. But efforts have been made to right injustices. For the most part these efforts have been well-intentioned if not always successful. It is difficult, however, to explain the Nation's abject neglect of the injustices that scar the history of the Hawaiian people.

The inattention to historical wrongs visited on Native Hawaiians cannot be attributed to a more benign course of events. In many ways their losses of land and sovereignty were as wrenching and as cruel as the losses felt by other Native American groups. Those losses left a legacy of human suffering for Hawaiians comparable to that of many other Native Americans. The federal government's actions and complicity implicate it in these losses and the resulting condition of Native Hawaiians. But there has been a self-perpetuating belief that Hawaiians are somehow "different" from other aboriginal people of the United States. This is exemplified in the conscious refusal of the

American Indian Policy Review Commission, over the urgings of many of us, to include a chapter on Native Hawaiians in its landmark 1977 report. The deliberate focus on Native Hawaiian claims by this Select Committee on Indian Affairs signals a new candor and courage to deal with issues that have been too long closeted.

Many people hoped that the work of the Native Hawaiians Study Commission in 1983 would mark a turning point in United States-Native Hawaiian relations. These hopes were misplaced. The Commission was directed only to "conduct a study of the culture, needs and concerns of the Native Hawaiians" and to "make recommendations to the Congress based on its findings and conclusions . . . ." The Native Hawaiians Study Commission might have addressed the historic moral and legal claims of Native Hawaiians against the United States, but there was no direction from Congress to do so. The Commission nevertheless found that Native Hawaiians were not legally entitled to compensation for loss of aboriginal title or sovereignty. Criticisms have been made of the crabbed legal analysis of the Commission and of its view of historical facts that were considered as a part of the analysis. I expressed my views on the inadequate and unsound legal analysis that was included in the report in my testimony before the Senate Committee on Energy and Natural Resources in Honolulu on April 16, 1984. A copy of that testimony is attached.

The conclusions of the Commission's report on "legal entitlement" to compensation beg the question. Of course existing law does not provide a right of redress for Hawaiian claims. Had one existed, it probably would have been pursued before 1983. The more appropriate question is whether or not the United States ought to recognize and compensate the claims of Native Hawaiians. This issue is dealt with briefly in a single paragraph of the conclusions and recommendations where "the Commission concludes that, as an ethical or moral matter, Congress should not provide for native Hawaiians to receive compensation either for loss of land or of sovereignty." Native Hawaiians Study Commission Report 28 (1983). The only basis given for this conclusion is that the historical situation in Hawaii was not sufficiently analogous to "the time when Congress voted payments to Columbia, as a result of the U.S. role in Panama." Unless Congress is satisfied with that cryptic, thoughtless treatment that went beyond the basic charge of the Commission, Congress must look to another forum for an analysis of whether the United States should allow claims to be brought against it by Native Hawaiians.

The issues to be addressed are:

- Is it consistent with the United States' policies and practices in Native American affairs to recognize and compensate claims of Native Hawaiians for loss of land and sovereignty and for other damages?

- What are the options available to Congress for redressing Native Hawaiian claims given their present needs and situation?

In considering the first issue, an analysis should be made of the Indian and Alaska Native claims processes, the nature, basis, and relief granted in typical cases, and the historical situations that led to such claims being recognized by the United States. I do not believe it is necessary to make an extensive additional study of the historical and cultural background of Native Hawaiians. This was done by the Native Hawaiians Study Commission Report and, while it can be criticized as incomplete or inaccurate in some respects, the report, together with the comments and criticism that are now on the public record as a result of the Minority Report and the published hearings of the Senate Committee on Energy and Natural Resources (S. Hrg. 98-1257), can furnish the basic information needed to compare relevant Hawaiian historical events with those that form the backdrop for other Native American claims.

The second inquiry will require a knowledge of the present day culture and conditions of Native Hawaiians and of Native Hawaiian preferences and sentiment concerning their claims. The Native Hawaiians Study Commission Report furnishes much of the needed statistical information. Meetings or hearings will be necessary to gather the views of Native Hawaiians concerning the magnitude and possible frameworks for settlement of claims. This information must be analyzed in relation to other Native American claims experiences so that Congress can be informed about options for resolving Native Hawaiian claims and the extent to which each option is comparable to experiences elsewhere in the United States. Importantly, Congress should be advised about the relative successes or failures in dealing with other Native American claims through Court of Claims adjudication, the Indian Claims Commission and specially-tailored legislation such as that used in Alaska and the eastern states.

Congress should constitute a blue ribbon commission on Native Hawaiian claims. The Commission should be charged with making the inquiries stated above, not with re-studying the questions that were before the Native Hawaiians Study Commission. Its mission, then, is a new one. The composition of the commission should be consistent with that mission. It should have as its members Native Hawaiian leaders, representatives of the state of Hawaii, and experts in Native American law, history, and tribal organization. The overall charge to the commission should be to produce a report which can be the basis of a congressional decision whether or not to take action to redress Native Hawaiian claims against the United States and, if so, to determine the best approach to take. Therefore, it is essential that the commission members, not just its staff, have a depth of knowledge, experience and expertise in fields relevant to the inquiries before it.

It is immaterial whether the commission members are appointed by the President or by congressional leadership. But they must have impeccable credentials and background. It would be preferable that the commission be created by federal legislation passed by both houses and signed into law by the President. This would evidence the commitment of Congress and the Executive to pay close attention to the commission's final report.

Your letter of invitation mentioned the possibility of referring the Hawaiian claims question to the U.S. Claims Court. That approach appears to allow less breadth and flexibility than the commission approach that I have described above. Its nonbinding results would require further congressional action and before taking action Congress may find it necessary to obtain additional information and recommendations.

Thank you for the opportunity to submit this testimony. The time is certainly ripe for action. Native Hawaiian claims deserve to vex the American conscience until Congress and the Executive have given them the same consideration as the claims of Native Americans in the other 49 states.

Attachment

Testimony of David H. Getches
before the
United States Senate Committee on Energy and Natural Resources
Honolulu, Hawaii
April 16, 1984

Mr. Chairman and members of the committee, I am pleased to have the opportunity to appear before you today. I have had a long and abiding interest in the subject of Native Hawaiian claims against the United States. It is gratifying to see the attention being give to the subject by the committee.

I am currently Executive Director of the Colorado Department of Natural Resources. Prior to my appointment I was on the faculty of the University of Colorado School of Law for four years. Before that, I was the founding director of Native American Rights Fund (NARF), a national, non-profit law firm serving Native Americans in matters of major significance. I am co-author of Federal Indian Law, Cases and Materials (with Rosenfelt and Wilkinson) and was on the Editorial Board of Felix Cohen's Handbook of Federal Indian Law.

For many years I have taught, lectured, and written on the law concerning Native Americans. I have concentrated increasing attention on Native Hawaiians and Alaskan Natives in recent years. More than ten years ago I began consulting with lawyers and Native groups in

Hawaii. The recent past has been marked by a growing awareness among Native Hawaiians that their experiences and concerns, both current and historical, closely parallel those of other Native Americans. One remarkable difference stand out: Native Hawaiians are the only group of indigenous people in the United States with which the United States Congress has not sought to right historic injustices, mistreatment and loss of land.

Felix Cohen, the leading Indian law scholar of all time, wrote in 1947 that "[t]oday we can say from the Atlantic to the Pacific our national public domain consists, with rare exceptions, of land that we have bought from the Indians." Cohen was proud that the United States, more than any other nation, had dedicated efforts to clearing the national ledger and the national conscience of transactions with Indians that resulted in acquisitions of land without compensation or for an inadequate price. Since Cohen wrote, hundreds of millions of dollars more have been paid to Native Americans for past unfairness. Nearly every recognizable group of American Indians has brought monetary claim under the Indian Claims Commission Act, vast amounts of land and money have been distributed to Alaska Natives under the Alaska Native Claims Settlement Act, and several Eastern Indian tribes have recovered land and money under congressional legislation.

Why have Native Hawaiians been ignored? Why has the nation not sought to do justice for this last 125,000 Native Americans? I suggest that relatively recent statehood and lack of visibility account for the neglect experienced by Native Hawaiians. Alaska only achieved statehood a year earlier than Hawaii, but had the nation's need for oil not moved economic and political forces into motion to press for its enactment, the Alaska Native Claims Settlement Act may not have been passed and Alaska Native claims still would remain unsettled. The question is, lacking such an exigency, how soon the United States will come to grips with Hawaiian claims?

Some have attempted to explain away the failure to deal with Hawaiian claims by saying that there are significant differences between them and the claims of other Native Americans. They insist that Native Hawaiians are ethnically different from other Native Americans, that they have a different history, and that they lack any legally cognizable claims against the United States. Let me address each of these apparent differences.

Ethnic Differences

It is true that Native Hawaiians are not American Indians. They came to these islands some 1,200 to 1,500 years ago from Eastern Polynesia, hundreds of years before the relatively recent arrival of European explorers. But special legal treatment has not been limited to a particular ethnic stock of Native Americans. Alaska Natives, for instance, include some people who are Indians but also Eskimos and Aleuts, whose ethnic origins are totally different and arrival more recent. Legally they have been treated the same. Cohen, Handbook of Federal Indian Law 739 (1982). It is well established that Congress can define and treat a group of people as a "tribe" or as Native Americans within the special protection of the United States so long as that group has some ancestors who lived in what is now the United States before discovery by Europeans, and so long as the group is a "people distinct from others." The Kansas Indians, 72 U.S. (5 Wall.) 737, 755 (1867); Cohen, Handbook of Federal Indian Law 5, 94-95 (1982). The determination, unless it is totally arbitrary, lies solely with Congress. United States v Sandoval, 231 U.S. 28 (1913).

Historical Factors

It is sometimes argued that there are substantial historical differences that set Native Hawaiians apart from other Native Americans. Hawaiians have no reservations, no tribes, no treaties. Although many Indian tribes have reservations, were organized as tribes, and entered into treaties with the United States, many did not. Many "tribes" really had no aboriginal political organization, but were organized in order to provide a vehicle with which Americans could deal in order to facilitate transfers of land. Many Indians never were fortunate enough to have any right to a reservation acknowledged to them and large numbers of Indian tribes never entered into any treaties. Most have nevertheless successfully brought claims against the United States with the consent of Congress. A dearth of treaties, lack of reservations, and absence of tribal status did not deter Congress in redressing Alaska Native claims. Indeed, there is much greater ethnic and cultural cohesion among Native Hawaiians who share a common Polynesian heritage and language than among Alaska Natives who represent diverse ethnic groups, numerous languages, and hundreds of communities.

In many ways, Native Hawaiians are similar to other Native Americans. Their history, while unique, has significant parallels to that of American Indians.

- Title to virtually all land in Hawaii is traceable to Hawaiian ownership.

- Hawaiians, like American Indians, have cultural reverence for the land; Hawaii has adopted as its state motto the ancient Hawaiian proverb which translated as "the life of the land is preserved in righteousness."

- Native Hawaiian people, like Indians, have become important parts of the dominant society, with many serving in the armed forces, legislature, and being productive citizens. Yet the typical Native Hawaiian resists assimilation as "just another American citizen."

- A robust aboriginal culture survives among Hawaiians and among Indian tribes more so than the rich cultures from throughout the world that have been more readily blended into the melting pot of America.

- A sad but true coincidence between Native Hawaiians and other Native Americans is the fact that they share dismal statistics as to employment, education and health.

The treatment of Native Hawaiians is one of the darker chapters of American history. The United States was an active participant in the dispossession and cultural erosion of Native people.

Hawaii had a well developed political and social structure under which a unified kingdom had been functioning as a nation for almost a century before the islands were incorporated into the United States. A customary system of land tenure evolved into rights recognized by official actions of the Hawaiian Government by the time of substantial American involvement.

By 1890, foreigners, mostly Americans, had acquired over a million acres in Hawaii. They controlled another three-quarters of a million acres under leases procured at bargain rates from the government and the King. This was not the result of any direct action of the United States; it was the consequence of changes in the land laws of the Kingdom of Hawaii. But Americans were instrumental in bringing about those changes.

An event that had profound significance for Native Hawaiians was the overthrow of the Hawaiian monarchy in 1893. This action wrested all remaining government and crown lands from Hawaiian control and put them into the hands of a provisional government, eventually into the hands of the United States Government. The final years of the Hawaiian Kingdom were marked by substantial American influence, official and unofficial. In 1887 an opposition group made up mostly of Americans sought to force King Kalakaua to abandon the pro-monarchy constitution and substitute for it a constitution that would reduce the King to a ceremonial figurehead with all power to reside in a cabinet that was responsible to the legislature. The King unsuccessfully sought United States protection from this powerful group. Instead of getting American help, he was forced to sign what became known as the "bayonet constitution." The bayonet constitution stripped the King of most of his power, imposed property ownership and income requirements for electors and candidates for public office, tying control of the Hawaiian Government to the planters and merchants, allowed American and European males to vote even if they were not citizens, and effectively disenfranchised many Native Hawaiians. Thus, the Hawaiian Government was run by an American dominated cabinet. The new circumstances allowed the United States to renew a reciprocity treaty on the Hawaiian King and to take Pearl Harbor, long sought by it.

When Kalakaua attempted to regain some of his lost power, he was pressured to back down by American and European diplomats, reinforced by the presence of American military forces. His successor, Queen Liliuokalani, also met resistance when she tested her authority. With strong encouragement from Washington, D.C., a group opposed to the Queen sought annexation of Hawaii to the United States. The Annexation Club, a secret group, formed a "Committee of Safety." With assurances of support from the United States Minister the committee plotted the overthrow of the monarchy. On orders of the United States Minister American troops landed in Honolulu on January 16, 1893, according to plans devised by the insurrectionists. The American troops blockaded the Queen's palace from access to the government building and then allowed the insurrectionists to occupy the government building.

Even before the takeover of the Hawaiian Government was complete, the United States Minister recognized the new "Provisional Government as the de facto government of the Hawaiian Islands." The Queen was forced to abdicate but did so under protest and subject to a later review of the situation by the American Government. To insure order, the Marines took custody of the government building and raised the American flag over it.

The United States Minister triumphantly wrote to the Secretary of State shortly after the overthrow of the Hawaiian Government that "the Hawaiian pear is now fully ripe, and this is the golden hour for the United States to pluck it." Within a few weeks delegates of the new government and the U.S. Secretary of State had negotiated a treaty of annexation and submitted it to the Senate.

Later, the United States reviewed the question of the American role in overthrowing the Hawaiian Government. An investigation revealed facts that led President Grover Cleveland to call for restoration of the monarchy. In a lengthy and eloquent message to Congress, the President observed that the overthrow was not "by the people of the islands." Rather "the Provisional Government owes its existence to an armed invasion by the United States." He concluded that the United States' role was opposed to established American foreign policy, to morality, and the principles of international law. Consequently, he said, the United States

> can not allow itself to refuse to redress an injury inflicted through an abuse of power by officers clothed with its authority and wearing its uniform; the United States can not fail to vindicate its honor and its sense of justice by an earnest effort to make all possible reparation.

Acceptance of the annexation treaty was delayed by a Senate divided over its propriety or efficacy. A new President, William McKinley, favored the concept of annexation stating that "we need Hawaii just as much and a good deal more than we did California. It is manifest destiny." Several years later McKinley finally achieved enough support in the Senate to win approval for the annexation treaty submitted to him. Upon annexation, control of the crown lands and government lands which had been seized by the Provisional Government passed to the United States.

It may be argued that the Native Hawaiians' history is different in two important respects from that of other Native Americans. First, land was not acquired directly from them as a people but from a willing sovereign -- the Provisional Government of the Republic of Hawaii. Second, that the United States has never treated them as it has other Native Americans. Surely the United States' complicity in the overthrow of the Hawaiian Kingdom and subsequent behavior of the United States makes the first distinction illusory. As to whether federal actions for the past 90 years indicate that Native Hawaiians should be treated differently from other Native Americans. There are two responses. One is that there is indeed a history of executive and legislative actions that evidences some special concern for rights and needs of Native Hawaiians.

o Recognizing that ancient Hawaiian land tenure afforded all Hawaiians a beneficial interest in crown and government lands, Congress specified in the annexation resolution and in the Organic Act that public land laws would not apply to ceded lands. Instead it required that revenues from the lands be "used solely for the benefit of the inhabitants of the Hawaiian Islands for educational and other public purposes."

o In 1910 Congress recognized that deteriorating social and economic conditions of Native Hawaiians was related to the loss of the Hawaiian land base and the associated culture and amended the Organic Act to ease the ability of Native Hawaiians to take up homesteads under an 1895 law of the Republic of Hawaii.

- The Hawaiian Homes Commission Act was passed in 1921 setting aside some 200,000 acres of public lands for Native Hawaiian homesteads in order to "rehabilitate" Native Hawaiians. Unfortunately the lands were poor, largely unsuitable for farming and lacking in irrigation water. Many of the lands were actually used for ordinary government purposes and the program was notoriously maladministered. In many ways the Hawaiian Homes Commission Act operated similarly to the General Allotment Act which divided Indian tribal lands in severalty among individual Indians.

- The Hawaii Statehood Act in 1959 in section 5(f) obligated the state to hold lands entrusted to it and the income from them "as a public trust for the support of the public schools. . . ., for the betterment of the condition of native Hawaiians. . . ., for the development of farm and home ownership on as widespread basis as possible, for the making of public improvements, and for the provision of lands for public use."

- More recently, Congress has included Native Hawaiians as beneficiaries in some acts providing services to Native Americans such as the Native American Programs Act in 1975.

Each of these examples has fallen short of its modest goals; special needs of Hawaiians have been partially recognized but the laws and programs have been inadequate and ineffectual. Nevertheless, the special status of Hawaiians is signaled by a history of particularized treatment under federal law.

Some have asserted that the few isolated examples of recognition of special rights in Native Hawaiians are insufficient legal recognition of those rights and therefore Hawaiians are not to be treated in any special way under federal law. The argument that disregard in the past should relieve the United States of any future obligation or concern for Native Hawaiians or should divest Native Hawaiians of right they might otherwise have is a curious one. When a similar argument was made about the rights of a tribe of American Indians, a federal appeals court recently said that to accept the argument

> would be enshrining the rather perverse notion that traditional rights are not to be protected in precisely those instances when protection is essential, i.e., when a dominant group has succeeded in temporarily frustrating the exercise of those rights. We prefer a view more compatible with the theory of the nation's founding: rights do not cease to exist because a government fails to secure them. See the Declaration of Independence (1776).

Legal Basis of Claims

Finally it has been contended that Native Hawaiians have no legal right to assert a claim against the United States. This proposition is, at best, unremarkable. It simply misses the point. The question has never been whether Native Hawaiians already have a legally cognizable claim to reparations. Rather it is whether the circumstances are appropriate for Congress to provide, through statutory enactment, a remedy for past harms to Native people attributable to the United States. The question is not whether a law now exists to provide that remedy. There is, of course, no such law. Failing an Act of Congress Native Hawaiians, just like all other Native Americans, are without a remedy. Sovereign immunity protects the United States from suit; if the United States were vulnerable to suit, there would be no cause of action cognizable on the courts; if there was a cause of action, the passage of time would mean that the statute of limitations or laches would bar the claim.

The true issue is whether equity and justice should move Congress to seek a remedy and what that remedy should be. This is precisely the question Congress was called upon to answer when it considered scores of special acts allowing tribes to sue the United States, when it debated the wisdom of the Indian Claims Commission Act, when it deliberated on the Alaska Native Claims Settlement Act.

Before 1946 Congress, on a case-by-case basis, authorized Indian tribes to bring actions in the Court of Claims. Beginning in 1836 Congress passed 142 such acts to give tribes a forum for their claims. Special jurisdictional acts typically were limited to a single tribe or band of Indians and the permissible bases of claims were specifically limited, such as to claims arising to land taken under a particular treaty, tort claims, breach of contract, and breach of quiet enjoyment.

Because the acts provided for only limited relief and proof of aboriginal title was usually held inadequate to support a taking of tribal land, many claims were not redressed. Furthermore, Congress became exhausted by the effort needed to deal with so many individual claims.

Comprehensive Indian claims legislation was passed in 1946. The Indian Claims Commission Act established an administrative forum to hear and decide a wide variety of claims. 25 U.S.C. 70-70v-3. The Act recognized many types of claims not known before it the common law or statutes as well as more traditional legal and equitable grounds that had been unavailable to Indians because they were barred by sovereign immunity or the statute of limitations. New bases for claims included, for instance, claims that would result if "treaties, contracts or agreements . . . . were revised on the ground of fraud, duress, inconscionable consideration, mutual or unilateral mistake, whether of law or fact . . . .," claims for taking of lands without necessity of proving recognized title, and all other claims "not recognized by any existing rule of law or equity" based on general principles of "fair and honorable dealings." Successful claims were brought where tribal land was unintentionally disposed of by the government, where Indian land was used by the United States, granted to a state, another tribe or a private individual. Mismanagement or lack of protection of Indian land or other resources by the United States resulted in judgments for many tribes. The goal of Congress was to do justice unrestrained by crabbed rules and technicalities.

When Congress passed the Alaska Native Claims Settlement Act it did not ever reach the question of the nature and extent of the Natives' aboriginal claims. Hearings were held on the subject but expedience and equity moved Congress to award relief, unfettered by elaborate legal arguments or neat distinctions. This is not to say that the remedies or approaches to the claims of Alaska Natives or Indians have been without problems or legal complications. But in each case Congress has determined the legal framework based not on some preconceived notion of legal right or what had been the limits of cognizable claims in another situation. The question has always been what seems appropriate to Congress, given prevailing notions of American fairness and American justice. That is the question to be asked concerning Native Hawaiian claims.

In an otherwise comprehensive and enlightening report, the Native Hawaiian Study Commission last year included an unhelpful and misleading analysis of the claims of Native Hawaiians. The analysis went to great pains to discover that there is no legal authority for claims to be brought by Native Hawaiians against the United States. What was needed instead was a comparison of how the United States has dealt with Native Hawaiians with the circumstances that have led Congress to enact legislation allowing remedies to other Native Americans. Had such an analysis been made, the conclusion would be unavoidable that:

- Native Hawaiians are a distinct group of aboriginal people in the territory of the United States having a common heritage and cultural ties to the land;
- Native Hawaiians were once stewards of all the land in what is now the state of Hawaii and historically the land was held for the benefit of all;
- most of the land in Hawaii that is now in federal, state or private hands was obtained from Native Hawaiians without compensation or for unconscionably low prices;
- the United States Government was intimately involved in political and economic affairs that resulted in disposition of lands from the Hawaiians and erosion of their culture;

- the federal government from the start has assumed responsibilities and accepted obligations of trust toward Native Hawaiians;
- the programs and efforts of the United States to deal with Native Hawaiians have been largely unsuccessful;
- social and economically, Native Hawaiians are in a desperate condition and in need of assistance.

These are the ingredients of a federal claim by Native American people. They track closely the elements that have led Congress to come to the aid of other aboriginal people. It is the obligation of the federal government to address the problem; it is a national problem that should not be masked by some superficial differences in history, by a distorted and parsimonious legal analysis, or by the feel of contentment that this land and its people radiate through their warmth and beauty.

I cannot believe that the people of the United States will leave claims of Native Hawaiians permanently unredressed. But how much longer should Hawaiians be required to wait? Several generations have already passed without the satisfaction of American justice. Once informed of the facts, Congress should take deliberate action to seek means for remedying past injuries to Native Hawaiians. Presumably a remedy would involve some combination of land and money coming under the control of Native Hawaiians. There are many issues and details that need to be worked out and it is not for me to suggest what is the most appropriate approach. It will take considerable deliberation, imagination, and compromise to reach a final claims settlement package that fits the cultural and social needs of Hawaiian people. There is much to do to develop the claims settlement package, and thus the inquiry should rapidly turn from the worthiness of Native Hawaiian claims to the approach that our nation should take to dealing with those claims.

THE SOVEREIGN NATION OF HAWAI'I

TESTIMONY OF KAWEHIOKALANINUI-I-IAMAMA'O KANUI-GILL ON BEHALF OF THE PATRIOTS OF THE SOVEREIGN NATION OF HAWAII NEI

AUGUST 26, 1988

University of Hawaii, East-West Center
Honolulu, Hawaii

Mr. Inouye:

Greetings to all.

My name is Kawehiokalaninui-I-iamama'o (blanket of Heaven forever) Kanui-Gill and I am a descendant of Kama'i O Kaholi Keawemauhili, the House of Keawe...I am the 12 generation, to Hawai'i Nei.

On behalf of my ancestor's, who were loyal Patriots during 1893 and our generation of patriots many still to be born, I bring this message with me, for you, from them. Simpy we would like to say.

You offer three options. We, see a fourth.

That is, UNTIL A PARDON (apology and restitution) OF OUR QUEEN, FOR TREASON, AND HONOR TO OUR NATION AND OUR FAMILY NAME IS RESTORED, YOU AND YOUR GOVERNMENT ARE IN CONFLICT WITH US.

Since the illegal annexation of our nation in 1898, no legally, binding form of pardon, has been officially extended to our Queen. Only until this is done will we expose our plan of action, not before.

I waive none of my Native Hawaiian rights, I reserve all of my rights as a Native Hawaiian and a natural born inhabitant of the Territory and the State of Hawaii, and I demand all of my Constitutional rights at all times.

THE SOVEREIGN NATION IS ALIVE AND WELL,

Kawehiokalaninui-I-iamama'o Kanui-Gill

Kawehiokalaninui-I-iamama'o Kanui-Gill
for
The Sovereign Nation of Hawaii Nei

Aug. 6, 1988

A RESOLUTION

THAT THIS HUI-PUWALU OF ASSEMBLED REPRESENTATIVE OF HAWAIIAN PEOPLES HELD AUG. 5-6, 1988 AT KAMEHAMEHA SCHOOLS, HONOLULU, HI., HEREBY DECLARES THAT SELF-RELIANCE, DETERMINATION AND AUTONOMY IS AN INTEGRAL PART OF THIS INALIENABLE RIGHT OF THE HAWAIIAN PEOPLE, AND CALLS UPON ALL HAWAIIANS FOR THEIR UNSWERVING SUPPORT FOR THE ATTAINMENT OF THIS OBJECTIVE,; AND;

THAT THE WRONGFUL ANNEXATION OF THE HAWAIIAN NATION AND THE UNJUST IMPRISONMENT OF OUR SOVEREIGN QUEEN, LILIUOKALANI IN 1893, CAN ONLY BE REGARDED AS AN AFFRONT TO THE DIGNITY AND HONOR OF THE HAWAIIAN NATION,; AND;

INVITES THE PRESIDENT OF THE UNITED STATES OF AMERICA TO EXTEND A FULL APOLOGY AND RESTITUTION TO THE HAWAIIAN PEOPLE SO AS TO SATISFY HONOR AND RESTORE THE FULL RIGHTS TO THE HAWAIIAN PEOPLE IN THE MATTER OF LAND, FISHERIES, ESTATES AND POSSESSIONS AND THE ABSOLUTE RIGHT TO DETERMINE THEIR FUTURE DESTINY,;

AND;

THAT THIS CONFERENCE FURTHER INVITES REPRESENTATIVES OF THE HAWAIIAN PEOPLE TO FORM AND ESTABLISH A BODY TO PROMOTE, ORGANIZE AND PURSUE THE FOREGOING MATTERS.

Kawehi Kanui-Gill

This resolution was passed unanimously by concensus of the Hawaiian people present at this conference and will be the rallying cry to unite the people of the world for their support.

This resolution will be hand delivered to the President, the President to-be, every State, every political candidate on the local level as well as every Hawaiian organisations. Not to limit our support we shall also seek support in the International arenas.

Like the Japanese, we want to seeek thc restoration ofthe Honor which was denied to our Queen, Liliuokalani, the Nation of Hawaii and our family name.

THIS RESOLUTION WAS ENTERED IN TO THIS CONFERENCE BY KAWEHI KANUI-GILL ON BEHALF OF THE NATION OF HAWAII, 8-7-88.

SELECT COMMITTEE ON INDIAN AFFAIRS
Senator Daniel K. Inouye, Chairman
838 Hart Senate Office Bldg. Washington D.C. 20510

TESTIMONY OF : Charles Kauluwehi Maxwell Sr.
Vice Chair-SAC To the Federal Civil Rights Commission, 157 Alea Place, Pukalani, Maui Hawaii 96768

Mr. Chairman, members of this committee, thankyou for affording me this opportunity to express my thoughts on this very important matter that have plagued our Hawaiian people for the last 95 years.

As the Chairman knows, we of the Aloha Association had taken this issue of Reparations to Washington in the very early 70's and had made our Congressional representatives aware of the claim that our people had.

Our claim is really simple, Queen Liliuokalani abdicated her reign of Hawaii to President Cleveland and not to the foreign insurgents who called themselves the Provisional Government. No Native Hawaiians belonged to this group and they were the true residents of Hawaii. The Queen appealed to President Cleveland on the illegal overthrow and he ordered the Hawaiian flag replaced over all the government buildings and the American flag taken down. This was the first time in American history an incident like this happened.

The Hawaiian kingdom had a treaty with the United States on being protected against illegal acts by any citizens of the United states, but this treaty was broken because all the members of the Provisional Government were American citizens.

In 1898, The United States made an illegal Treaty of Annexation which was signed by 16 foreigners. Does this make the enabling act, the State Hood Act illegal too?

On the subject of Sovereignty, we as Native Hawaiians always was a sovereign nation because when the queen abdicated, we did not loose this status. We as Hawaiians have prior rights, that in essence means, our rights was given to us by gods not by men. What ever these rights are called aboriginal, cultural or tribal, it still exist and these rights are the bases of our sovereignty.

The mere fact that the Hawaiian Homes Act was created and later Sec. 5f of the State Hood Act and later yet the creation of the Office Of Hawaiian Affairs, is proof that our sovereignty is recognized by the Federal and State Government.

Bills should be introduced in Congress Mr. Chairman, that would re-establish our sovereign rights, for fishing,access rights, rights to the natural resources (water, geothermal, coral etc.), anything that was enjoyed by our Hawaiian Nation, prior to 1893, should be restored to the present Native Hawaiian population.

This is how I and many others view sovereignty, sovereignty within sovereignty, just like the Yakama Nation of Washington.

It disturbs me and many others that some of our people view sovereignty in a different light. That they want self determination complete and total. We will have to be aware of the fact that this is the only nation that affords us the right to protest and demand for justice, yet maintaining our cultural identity. I am proud to be a Native Hawaiian, a descendant of the Hawaiian Nation, and a citizen in good standing of this United States Of America.

In closing I would like to comment on Rep. Dan Akakas testimony pertaining to uniting our people. History will show that the only time our people was united is when Kamehameha The Great united all the islands by force. This is not possible today, but if we can instill the importance of preserving our culture to everyone that lives in Hawaii and to the visitors that come, then maybe our grandchildren can still be Hawaiian. Thank you.

August 29, 1988
Washington, D.C.

Resolution to exonerate the Honor of Hawaii's Queen Liliu'okalani

Where as the last legitimate head of state of the Hawaiian Nation Queen Lydia Kamakaeha Liliu'okalani was unlawfully dethroned by a U.S. inspired coup de'etat on January 17,1893, violating binding international treaties of perpetual peace and friendship and

Where as the rabid annexationist businessmen who conspired to to illegally strip Hawaii of its honor and membership in the World Family of Nations, in collusion with American governmental agents, by fabricating a story to justify their heinous actions, i.e. that their lives were in danger and their businesses were threatened, and allowing the landing of armed U.S. troops.

Whereas Queen Liliu'okalani in order to avoid any unnecessary bloodshed and loss of life did temporarily surrender to the Armed Forces of the U.S. until such time as the enlightened justice of the American government would restore her to her rightful place as head of the friendly nation of Hawaii, and

Whereas 95 years have passed since the unlawful taking of the Pacific island nation of Hawaii, causing genocidal harm where today Hawaiians have the highest rates of death through diabetes, heart attacks and lead every social and economic indicator of the almost genocidal demise of Hawaii's indigenous inhabitants, correlating loss of nationhood and national character with the loss of life and hope expressed through an unwillingness to accept a revisionist attempt to whitewash irrefutable evidence implicating the American government in a crime of enormous magnitude,

Now be it resolved that the American character as champion of the oppressed and defender of the righteous can be demonstrated by President Reagan through the power of his office, vindicating the honor of Queen Liliu'okalani and Ka Poe Hawai'i, the Hawaiian people by exonerating the Queen of any hint of wrongdoing and issuing a full unconditional pardon and apology on the eve of her 150th birthday, September 2, 1988.

Submitted Testimony
by Gard Kealoha
Chair, Historic Sites Committee
Association of Hawaiian Civic Clubs

To Senator Daniel K. Inouye
Chair, Senate Select Committee on Indian Affairs
Hearing, Friday, August 26, 1988
Jefferson Hall, East-West Center
Honolulu, Hawai'i

Aloha Senator Inouye,

Lawrence Tribe, the brilliant lawyer who argued the State of Hawai'i's justification for its Land Reform Act before the U.S. Supreme Court a few years ago, likened our Bishop Estate lands to those of the American colonial settlements that were arbitrarily claimed by European monarchs during the 18th century. That kind of absentee ownership, to paraphrase Tribe in an appearance before the Honolulu Board of Realtors membership made after the case was decided in the state's favor, was inimical to the desire for private ownership of land that the colonists wanted in the face of onerous taxes and a sense of a severely diminished home rule.

It seems ironic that the very state government that posited this argument, which incidentally,did not increase the number of available houses, now tells us that foreign investments (read absentee ownerships) are good for Hawai'i. Less than a decade has passed since that infamous Supreme Court decision was made.

Infamous because it boggles the native Hawaiian mind. Lands were taken away from a precious native Hawaiian resource. They were lands that were set aside by a Hawaiian princess to provide important educational benefits through revenues derived from its uses and they are lands handed down from time immemorial through a succession of ruling chiefs. How the U.S. Supreme Court could accept the characterization of our lands to those of absent European monarchs who stole theirs and compare them to our ali'i is at the least puzzling and at the most, a further example of American avarice that continues to scatter Native Americans around this country, It is indeed, interesting to witness the pious references in this current political season, to a patriotism that has refused to examine closely its platitudes of liberty and freedom for all.

We can be thankful, I suppose, for the privilege of making our own case, of arguing our own defense and of adopting their eagle's admonition to remain ever vigorous and alert in the defense of our lands albeit the sad history of Hawai'i seems to want to repeat itself even to this day.

P.2 Gard Kealoha, Chair, Historic Sites Committee
Association of Hawaiian Civic Clubs

The point to make is this. Native Hawaiian resources, especially those derived from its land resources -public and private, are constantly subjected to the demands of the times. From the gunboats of foreign nations in early 19th century Hawai'i to the more subtle complexities of "gunboat" legislation and decisions that our state and federal government enact today, it is no small wonder that native Hawaiians find themselves angry and on the short end of the equity stick.

The U.S. government's largesse in including Native Hawaiians in current Native American legislation must not be confused with the manner in which its other decisions have robbed Native Hawaiians of resources that essentially diminish their cultural self determination and sovereignty. If one were to put a price tag on the losses, that finding would easily drown the amounts dribbled to Native Hawaiians in the context of legislative gain. More importantly, current federal and state Native Hawaiian legislation do not restore sovereignty and do not affirm the right of an indigenous people to govern themselves in the historic light of treaties executed between the American nation and the Constitutional Kingdom of Hawai'i. Not a single Hawaiian since the Queen, has ever yielded this right.

The federal government has failed to affirm its trust relationship on lands set aside in the Statehood compact. Today's enormous challenging demands for progressive uses of Hawaiian resources leave out the native Hawaiian equities.

As Chair of the Historic Sites Committee for the Association of Hawaiian Civic Clubs, I am compelled to remind our good Congressional leaders that our Hawaiian resources continue to be taken without the firing of a single shot. All of our lands are historic. They are described in our oral tradition as the very bones of our ancestors. We have named the ridges and crests of our mountains and valleys for generations of our people. We are one and the same with aina. We are the eyes- the maka and the ea or spirit of our lands.

" Do not sell our lands, " begged a native Hawaiian in an incident(described by Professor Marshall Sahlins in his important research) in a session of the House of Nobles during the days of our Constitutional monarchy, " or we will become as flies that wander about without a home."

I respectfully beg you, too, to not let more of our people become as nomadic flies. The native Hawaiian experience is a blight on America's history and ideals. This great country cannot continue to boast to the world and hide the dismal reality of its appalling political mistakes.

We also realize that we do not have the luxury of time to put those measures that can correct the wrongs, given the obvious knowlege that our Congressional leaders will not be there forever and are mortal.

Hence, a Congressional commission comprised of clear thinking, thoughtful Native Hawaiians and Americans alike, should be generously funded with appropriate research and other needed components to assure that its recommendations are well documented and that its strategies for actions and achieving self determination are realistic and possible.

There isn't much time, if we are to avail ourselves too, of the most advantageous situation in our federal representation and leadership . If it doesn't happen now, it will be difficult to predict when and if such political advantage will ever happen again.

Mahalo for allowing the submission of these sentiments for the record and for your always wise counsel and distinguished leadership.

TESTIMONY
ON NATIVE HAWAIIAN REPARATIONS
BEFORE THE SENATE SELECT COMMITTEE
ON INDIAN AFFAIRS

The Honorable Daniel K. Inouye
Chairman

BY

Ms. Ilima A. Piianaia, Chairman
Hawaiian Homes Commission
State of Hawaii

Keoni Auditorium
East-West Center
Honolulu, Hawaii

August 26, 1988

TESTIMONY

Chairman Daniel K. Inouye and members of the U. S. Senate Select Committee on Indian Affairs, mahalo for the opportunity to testify on the matter of reparations to the Hawaiian people.

I am Ilima A. Piianaia, Chairman of the Hawaiian Homes Commission. The agency I head is charged with the responsibility of administering the provisions of the Hawaiian Homes Commission Act, 1920, as amended, which law was enacted by the United States Congress in 1921. Upon Statehoood, as a compact between the State of Hawaii and the United States of America and as a condition of admission, Hawaii adopted the Hawaiian Homes Commission Act as a provision of its constitution and assumed the responsibility of administering the lands set aside for native Hawaiians, defined as persons with fifty percent or more Hawaiian blood.

In 1983, the Native Hawaiian Study Commission Report found that there was insufficient evidence to support the claim that the United States acted illegally during the events surrounding the overthrow of the Hawaiian monarchy. Based on these findings, the majority concluded that there is no basis for reparations to the Hawaiian people.

As I understand, a thorough and unbiased study of the historic events leading up to, including and following the overthrow, must be done to replace the findings in the current report. Until this is done, there is little likelihood that Congress will act to compensate the Hawaiian people for losses that occurred as a result of these events.

The purpose of these hearings, as I understand, is to seek views on how best to pursue the obtaining of a thorough and unbiased study and resolution. As I further understand, there are at least three options available:

> First, the Senate can introduce a Senate Resolution to refer the Hawaiian claims question to the United States Claims Court.
>
> Second, there could be introduced a concurrent resolution to establish a Congressionally appointed commission to study the historical events surrounding the overthrow of the Hawaiian monarchy and make recommendations based on its findings. Such a resolution would take effect immediately upon passage by the House and Senate without having to be signed into law.
>
> Third, legislation could be introduced in the House and Senate to establish another presidentially appointed commission to restudy the historical events of the overthrow and make recommendations. This option would require passage by the the House and Senate and would have to be signed into law by the President.

Of these three options, it would seem that referring the matter to the United States Claims Court would probably result in getting a fairly unbiased and thorough study of the events surrounding the overthrow of the Hawaiian monarchy. It also appears that it might be the most time-consuming and expensive means of proceeding.

The third option seems to rely heavily on the outcome of the upcoming elections.

The second option outlined above, calling for the passage of a concurrent resolution to establish a Congressionally appointed commission to study the historical events surrounding the overthrow and make recommendations based on its findings, seems to be the most expeditious means for finally and fairly getting at the truth of the matter.

Thank you for the opportunity of providing our views on this important question.

TESTIMONY
ON NATIVE HAWAIIAN REPARATIONS
BEFORE THE SENATE SELECT COMMITTEE
ON INDIAN AFFAIRS

The Honorable Daniel K. Inouye
Chairman

BY

John Waihee, Governor

State of Hawaii

Keoni Auditorium
East-West Center
Honolulu, Hawaii

August 26, 1988

TESTIMONY

Chairman Daniel K. Inouye and members of the U.S. Senate Select Committee on Indian Affairs, mahalo for the opportunity to testify on the matter reparations to the Hawaiian people.

I am John Waihee, Governor of the State of Hawaii. I bid you welcome to the "Aloha State".

No doubt we share a common interest in assuring that justice be done, that wrongs against groups of our fellow Americans be vindicated.

We live in a pluralistic society, whose very strength stems from the diversity of our people. No harm suffered by one group can be allowed to go unremedied, for even a small rip in the fabric of our culture lessens the value of the whole.

If, therefore, sufficient evidence exists to justify reparations to native Hawaiians for actions long ago taken by our countrymen, then it is imperative that reparations be made.

And, what of the evidence? Certainly it has been looked at before and rejected as insufficient to support reparations. But is that the end of the line for native Hawaiians?

I think not. We Americans pride ourselves on fair play. Fairness clearly warrants a second look at the events surrounding the overthrow of the Hawaiian monarchy.

I realize the issue before this committee is how this second look is to be accomplished. Having faith that all of you believe in fairness and in justice, the mechanics of that second look I leave to you.

Mahalo and Aloha.

September 2, 1988

Senator Daniel K. Inouye, Chairman
Select Committee on Indian Affairs
United States Senate
Washington D. C. 20510-6450

Senator Inouye, Aloha!

On this day, the birthday of our beloved Queen Liliu'okalani, I write to you to share my views on the issue of "Hawaiian Native Claims" or reparations.

Senator, please know that my interest in "Hawaiian Native Claims" goes back to 1973 and although a long time has passed, I still believe that the Hawaiians are entitled to some form of compensation for the overthrow of the Hawaiian Monarchy.

I am also well aware of your long interest and support of this effort and commend you for your faith in our cause.

I have taken special interest in your hearings of August 26, 1988 and was present during part of the testimony that day. Although I missed hearing the panelists that followed Dr. Blaisdell's group, what I did hear compels me to write this letter.

Senator, I am most disturbed with the Office of Hawaiian Affairs, who urged you two (2) years ago, not to submit any legislation as they intended to consult the Hawaiian people and to submit a bill to you. To my knowledge, they have done nothing until recently when they contracted with the Native Hawaiian Legal Corporation to prepare a bill for them. In my judgment they have wasted two (2) years and now their recent effort will involve additional delays.

I am further concerned by the testimony relating to the issue of Sovereignty and requests for additional delays. Although, I am not opposed to Sovereignty, I do oppose any further delays of our efforts.

Senator Daniel K. Inouye
September 2, 1988
Page 2

I would like to see the Congressional Legislative Process begin as soon as possible and strongly recommend that as it relates to Congress, there be no further delays.

Towards that end, I agree that efforts must be made to overcome the negative report of the majority of the Native Hawaiian Study Commission that was chaired by Kinau Kamali'i. Therefore, of the alternatives that you requested input on, I recommend that legislation be introduced creating another Native Hawaiian Study Commission. I further recommend that this commission be appointed by the United States Congress and that it include members of the United States Senate and House of Representatives.

Senator, I beg you please do not heed the call for further delays, but instead, push on, "Imua" [go forward]. The Hawaiian people need Justice now..

Mahalo & Aloha

Charles Rose
599-B Keolu Dr.
Kailua, Hi. 96734

COMMUNITY-BASED MENTAL HEALTH INITIATIVE

FRIDAY, AUGUST 26, 1988

U.S. Senate,
Select Committee on Indian Affairs,
Honolulu, HI.

The committee met, pursuant to notice, at 2:10 p.m., in the Keoni Auditorium, East-West Center, Honolulu, HI, Hon. Daniel K. Inouye (chairman of the committee) presiding

Present: Senator Inouye.

Also present: Representative Akaka.

Staff present: Patricia Zell, chief counsel; and Elva Arquero, chief clerk.

STATEMENT OF HON. DANIEL K. INOUYE, U.S. SENATOR FROM HAWAII, CHAIRMAN, SELECT COMMITTEE ON INDIAN AFFAIRS

The Chairman. Good afternoon and welcome to this hearing of the Senate Select Committee on Indian Affairs on the need for a comprehensive community-based mental health initiative.

The committee has scheduled three hearings to examine the need for a community-based mental health initiative that would address the mental health care needs of Native people. The first hearing was held on July 7 of this year in Washington. Testimony was received from health care professionals and Indian health care providers from all parts of the country, each documenting the alarming statistics of suicide, alcoholism, homicide, depression, and other mental health problems in the American Indian population.

In addition to this hearing today, the committee will be traveling to Alaska next week to receive testimony on mental health needs of Alaska Natives, Eskimos, and Aleuts. Following these hearings, the committee will bring together a working group of native people to develop legislation to address the particular needs identified in the hearing process.

The 1985 study conducted by the Native Hawaiian Health Research Consortium and submitted to the United States Department of Health and Human Services examined the mental health care needs of native Hawaiians and found, I am sad to report, that in comparison to statewide population estimates, Native Hawaiians have higher proportions of alcohol and narcotics use; school performance impairment; social problems with family, other people, and children, including higher proportions of assaultive acts and anti-social behavior; higher rates of suicide among young adult and elderly males; higher rates of child abuse and neglect; and higher levels of stress.

The study also revealed that Native Hawaiians under-utilize mental health services, because they are either unacceptable as presently structured and delivered or because they fail to accommodate Native Hawaiian values and life styles. Further, the study found that there is virtually no training in Hawaiian culture provided to public mental health workers and that there are few Native Hawaiian mental health professionals.

Federal programs to address the mental health care needs of Native Hawaiians are minimal, and the U.S. Department of Health and Human Services has thus far resisted efforts to expand the health care services that are provided to other Native American populations.

The objective of this hearing is to examine the potential for the coordination of existing resources, services, and programs, both within the Department of Health and Human Services and the State Department of Health and within the private sector to address problems of mental health in the Native Hawaiian population. From testimony received by this committee, it would seem that there is a consensus that a community-based initiative is the best means of enlisting Native communities in what must be a comprehensive effort to address the mental health care needs of all Native Americans.

With that, I welcome all of you this afternoon, and without further ado, may I call upon the Honorable Moses Keale, Chairman of the Office of Hawaiian Affairs.

Mr. Chairman, welcome again, sir.

STATEMENT OF HON. MOSES KEALE, CHAIRMAN, OFFICE OF HAWAIIAN AFFAIRS, HONOLULU, HI

Mr. KEALE. Thank you, Senator.

The creation of a comprehensive community-based mental health initiative to address the mental and emotional health care needs of Native Hawaiians is long overdue.

Ano 'ai awakea kakou—good afternoon, Mr. Chairman and Congressman Akaka. I am Moses K. Keale, Chairman of the Board of the Office of Hawaiian Affairs. This office supports the creation of a comprehensive community-based mental health initiative to address the mental and emotional health care needs of Native Hawaiians.

Native Hawaiians are a unique group of people whose culture patterns are reflected in traditions of personal, family, and social behaviors. These behaviors contribute to the identity and security of Hawaiians throughout their lives.

Although our people have many of the same patterns and variety of mental health problems as other indigenous peoples, we find that the cause of these mental health problems and the perception of these problems as well as the resolutions to the problems differ from those who are non-Hawaiian.

According to the research and service project called Hale Ola o Ho'opakolea in the Native Hawaiians Study Commission Report, Volume 1, "Pressures to successfully provide adequate income levels for families and stable jobs produce stresses among Native Hawaiians and generate role and value conflicts. A significant part of the problem is perhaps that there are no real alternatives that one can freely turn to aside from the dominant Western life style."

This comprehensive community-based mental health initiative will provide real alternatives for our Hawaiian people. These alternatives will alleviate the high proportions of stress, social problems, personality disorders, child abuse and neglect, and suicide. Hawaiians rank high in these areas as compared to other ethnic groups.

In 1987, Hawaiian children accounted for 24 percent of abuse and 21 percent of neglect cases; 23 percent of male suicides are Hawaiians; 10.5 percent of admissions to State mental health facilities are Hawaiians who have social problems with mates, family, other people, children, assaultive acts, antisocial behavior, and personal problems such as alcohol abuse, narcotics, impairment in job, school, and housework, anxiety phobia, and depression.

Our office hosted a conference of Native Hawaiian healers in early February of this year. Our elders recognized the needs of our people linking mental health and physical health. Hoola lahui, to let the race live, was the call.

We need to be able to take the best of both worlds and allow our people to help themselves. This initiative will allow us to do so. We can then take our elders' practice, revitalize the role of the 'ohana, and move towards healing ourselves.

Mr. Chairman and members of the committee, mahalo a nui loa no ko 'oukou lokomaika'i. Your attention is most appreciated. Thank you for affording us this time to state our concerns.

Mahalo.

[Prepared statement of Mr. Keale appears in appendix.]

The CHAIRMAN. Chairman Keale, I thank you very much, sir.

Now, may I call upon the distinguished senior Member of the Hawaii delegation to the House of Representatives, the Honorable Daniel Akaka.

Mr. AKAKA. Thank you very much, Senator Inouye.

I want to take this opportunity to thank and commend you for holding today's hearing on the justification for creating a comprehensive community-based mental health initiative to address the mental and emotional health care needs of Native Hawaiians. I know we will all benefit from the understanding we gain today as we listen to the many individuals who are touched by the needs of our Hawaiians.

As Hawaiians, it is not easy to stomach the notion that our people face serious mental and emotional health needs. We would like to think of ourselves as a happy, vibrant people who have easily assimilated to the onslaught of Western culturalization. After all, we know how to throw a good luau, and we obviously still have what it takes to make others happy.

Yes, we would like to sit back and say there is no need when the question of mental and emotional help is raised. We know how to handle our own problems. We just keep to ourselves, sing a little, drink a little, and everything will be all right. But the fact of the matter is that we are not all right. In fact, we are everything but all right.

Hawaiians, on the whole, face significantly higher mental and emotional health problems than the entire population of our State.

During my lifetime, I have heard stories of Hawaiian men who are unable to hold down jobs and girls, themselves still children, raising youngsters without any idea where the next meal will be coming from. As an educator, I have seen children literally bounced back and forth between different schools and different families, sometimes up to five times a year.

A sound, stable, and healthy environment? I should say not. The mental and emotional status of our people paints a sad, almost desperate picture. If I didn't know better, I might be led to believe that we are talking about the population of an underdeveloped nation, not of the great industrialized power known as the United States.

But, no, we are talking about Hawaiians, Hawaiians who once ruled these shores with confidence and compassion, who knew how to protect our resources and conserve our assets, Hawaiians who have been subjected to every type of human and natural catastrophe we can think of. We have been ravaged by disease and brutalized by force, and what scars have we been left to bear? Our people are in prisons at record high levels. We have some of the highest suicide rates, and we are facing some of the highest levels of alcohol and drug abuse rates around.

Is there any way out? Can we overcome the burden imposed upon us? Is there any hope? Well, if we think about the fact that there are other native Americans in this country whose mental and emotional status is far worse than our own, we might find solace, but I doubt it.

No, the answer is not found in looking to other pastures. We have it right at our own disposal. In fact, it is even in this very room in each and every one of us.

We can improve our morale. We can restore self-confidence, self-esteem, and dignity to our population. We don't have to be delegated to the sidelines of the game of life, forced to the status of mere spectator as our islands move from one hand to another and our future is left to the ravages of insensitive minds.

We have the mana, the power, to pull our people out of the dark depths of depression into which so many have been cast if only we accept the challenge, and many of you here today have dedicated yourselves to meeting that challenge, to fighting for what is right and what is sorely needed.

We have come together today to offer our mana'o on the justification for creating a mental and emotional health initiative for Hawaiians. Well, I believe that the facts speak for themselves. If we do not act soon to address the insidious threat that mental and emotional health problems pose to our people, very soon, we won't even be a people.

I am no expert on mental and emotional health therapy, and I won't even attempt to dictate the strategy most appropriate to our cause. But I can recognize a problem when I see it, and this may be one of our worst ones. I am not fooled by the problem. I know that its solutions are complicated and intricately intertwined.

However, I know, with equal fervor, that many of you have the answers, the experience, the knowledge, and the foresight to understand what needs to be done.

A mental and emotional health initiative for Hawaiians is the right way to go, and I want to lend every ounce of my support to making it become a reality. I truly believe that it will soon become a reality.

I have already taken it upon myself to poke around back in Washington. I have met—and I know a few of you joined me—with the Director of the National Institute of Mental Health, and I have impressed upon him the need for further research and service for our people. I think he knows that we mean business. Furthermore, I am working very hard with Senator Inouye, and he is doing a great job for the people of Hawaii, to get the government to put up hard core dollars.

I recognize that much of our problem lies in the alienation of the people from the aina, and that is something that needs to be addressed concurrently with any research and service initiative we may design. But whatever our philosophy, whatever our value system, we cannot dispute that the time to start is now.

I commend the Senator for bringing this matter to the forefront of the committee's agenda. I also thank him for including me in this hearing, and I thank all of you for coming to present your points of view today.

Mahalo.

The CHAIRMAN. I thank you very much, Congressman Akaka.

Our next witness is a Native American who has been in the forefront in working with Native Hawaiians and in recognizing the importance of promoting traditional values and Hawaiian life styles as an alternative to the Western type of mental health treatment.

I am pleased and most proud to call upon our next witness, the Director of the State Department of Health, Dr. John Lewin.

STATEMENT OF JOHN LEWIN, M.D., DIRECTOR, HAWAII STATE DEPARTMENT OF HEALTH, HONOLULU, HI

Dr. LEWIN. Thank you very much, Senator Inouye. It is a pleasure to have this opportunity today to testify before you and to thank you for your service to the indigenous peoples of America, the American Indians, the Alaska Natives, and the Native Hawaiians.

As the Director of Health of the Hawaii State Department of Health, I welcome this opportunity to support a comprehensive mental health initiative for Native Hawaiians.

The "E Ola Mau: Native Hawaiian Health Needs Study" has documented that Native Hawaiians have high proportions of assaultive acts and anti-social behavior, higher proportions of alcohol and narcotics use, higher rates of suicide among males particularly, higher rates of child abuse and neglect, higher rates of residence in correctional institutions, and higher levels of stress. Yet, Native Hawaiians under-utilize the mental health services provided throughout the State and provided by the Department of Health.

This is largely because the services provided fail to accommodate Native Hawaiian cultural values and practices.

The Department of Health has begun to address this problem with the establishment of a Native Hawaiian Health Task Force and through the newly created Office of Hawaiian Health, but more needs to be done through a concerted effort to provide Native Hawaiians access to traditional and culturally consonant health practices.

The Department of Health recognizes the importance of promoting traditional beliefs and life styles as alternatives to Western concepts of mental health. We strongly recommend that the mental health needs of Native Hawaiians be considered in the committee's mental health initiative with the following in mind:

First, that mental health services be community-based and be committed to Hawaiian culture and values;

Second, that mental health programs be staffed with community workers that are knowledgeable of Native Hawaiian culture and the community in which the Native Hawaiian lives;

Third, that Native Hawaiians be principally involved in the planning, management, monitoring, and evaluation of mental health services.

On behalf of the Hawaii State Department of Health, I, as its director, will assist the Committee on Indian Affairs in whatever manner needed to bring about these changes and to meet the mental health needs of our Native Hawaiian people.

[Prepared statement of Dr. Lewin appears in appendix.]

The CHAIRMAN. I thank you very much.

Do you have any statistics on the number of Native Hawaiians involved in mental health?

Dr. LEWIN. We are gathering these statistics at this time, but we feel that 10 percent of our Native Hawaiian adult male population are dealing with some serious form of problem, as mentioned earlier. Therefore, the families of these people are suffering.

Because Native Hawaiians in general are dealing with a higher incidence of morbidity and mortality from a variety of kinds of health problems, the stress in the family from these circumstances adds to these conditions. Therefore, I think it is hard to estimate, but I think we are going to find that three out of four Native Hawaiian families are seriously touched by some kind of stress related problem that will then have some mental health aspect.

When you include narcotics, alcohol abuse, and all those other kinds of problems, then we feel that our Native Hawaiians are the population most in need of services, both preventive and therapeutic. Again, we cannot simply assume that our regular program services are going to meet these needs because of the unique cultural and community concerns and values of the Native Hawaiians.

The CHAIRMAN. During my visits on reservations, I have made it a point to inspect clinics, especially mental health clinics, and I have found that in every clinic, there is a large array of Native American Indian professionals at all levels.

Do we have a sufficient number of Native Hawaiian professionals to work in your program?

Dr. LEWIN. We certainly do not. We need to train those people, and manpower development is an important part of this whole effort.

I believe, however, that we do have a number of well trained and excellent Native Hawaiian health professionals who are not being utilized to their maximum extent and to their capability of the State to provide services. We need to create positions and jobs and opportunities for the Native Hawaiian professionals that we have and train others to fill these slots.

I think perhaps the most significant accomplishments of the Indian Health Service have come in training of Indian health professionals. This may have begun with the community health representative program, but then it went on to aggressively train nurses. Once nurses were trained, it promoted sending kids off to college to become physicians, pharmacists, lab techs, and so forth.

Really, that is when Indian health services, I think, began to transform themselves, when the people were able to provide services in a culturally acceptable manner.

I think a lot has been done in Hawaii to bring Native Hawaiians into programs. This year, the Department of Health is going to hold a Native Hawaiian health conference. It is a major conference. There will be more than 1,000 Native Hawaiian people attending, and these people will be employees of the Department of Health.

We have learned that although many of these employees are not in prominent health professional positions, that we have nearly 1,000 Hawaiian and part-Hawaiian employees in the Department of Health. We are bringing these people together—actually, this is the work of our Native Hawaiian Health Task Force—and concentrating on these people for a two-day period in an effort not only to look at making health services more accessible to Native Hawaiian people and more culturally accessible but also to activate these people to return to the community level and become involved in making some of the efforts that you have suggested in Washington come about so that when funds do become available in a larger way for comprehensive services and for mental health services, we will really have a community based care system and network of people set up to make sure those monies are well spent.

The **Chairman**. Thank you very much, Doctor. You have been most helpful.

Dr. **Lewin**. Thank you very much.

The **Chairman**. We now have three witnesses who constitute a panel: the Dean of the University of Hawaii's School of Public Health, Dr. Jerrold Michael; Professor of Psychiatry and Public Health at the University of Hawaii's School of Medicine, Dr. Satoru Izutsu; and a member of the Mental Health Task Force, Native Hawaiian Health Research Consortium of the University of Hawaii, Ms. Ku'umealoha Gomes.

Dr. Michael, it is always good to have you with us. Please proceed.

STATEMENT OF JERROLD MICHAEL, ScD, Dr.P.H., DEAN, SCHOOL OF PUBLIC HEALTH, UNIVERSITY OF HAWAII

Dr. **Michael**. Thank you very much, Senator Inouye.

Senator, I do very much appreciate the opportunity to appear here and to speak on this critically important subject.

Representative Akaka, it is nice to see you again, sir.

Since I have submitted testimony for the record, I would only like to paraphrase a few items, but as professors paraphrase, you know what will follow will not be too short.

The **Chairman**. May I assure all witnesses that their prepared texts will appear in the record.

Dr. **Michael**. Thank you, sir.

As you well know because of not only your years of work with the Native Hawaiians and also with the American Indians and Alaska Natives, the mental health needs of most Native people in our country, are, at best, only partially addressed and, at worst, least understood in terms of priority.

In contrast to more Western concepts of mental health, traditional Hawaiian American and Indian values and beliefs that influence mental health—take the view of the individual as one of unity of body, mind, and spirit, a harmony which springs forth from an inseparable relationship with sky, land, sea, and nature. Without acknowledgement, understanding, preservation, and promotion of natural culture, there are limited routes for socialization.

Currently, There is a loss in sense of continuity with the past, a failing sense of ethnic identity, and a loss of personal, political, and economic empowerment, leading ultimately, as Representative Akaka has so eloquently said, to cultural dislocation, family disintegration, and, obviously, tremendous mental health problems.

Senator, you referred in your opening remarks to that outstanding 1985 mental health study, and we have a representative on the panel here who is part of that Native Hawaiian Health Research Consortium. It really is a most excellent review of the problems.

One part of that study with which I think we in the University in general and in the School of Public Health in particular can be of help is in the furthering of the frontiers of knowledge as to the extent of the problem and, from that, notions on how best to deal with it. That excellent study suggested a number of research areas, and we would like to be participants in that effect.

Those research areas include the conduct of epidemiological studies which focus on the strengths of Native Hawaiians, the conduct of studies of the natural support systems and networks, the conduct of studies of mental health services, the delivery options and preferences, the conduct of studies of Hawaiian language materials and their translation into health beliefs and practices—so important and so well done in the Indian Health Service—the conduct of evaluation studies of the effectiveness of existing public and private educational programs, and studies of ethnocultural identity, measures of alternate life styles, and their impact on health practices and outcomes.

In addition, I think I can safely say without fear of successful contradiction that not just the School of Public Health but the University in general remains committee to participating with the Hawaiian leadership and in close participation with our good colleagues in the Department of Health in addressing these mental health issues and health issues in general.

Thanks to your help Senator Inouye, we have recently received a very major grant from the United States Public Health Service to enhance the faculty makeup of our school to, hopefully, recruit to that faculty Hawaiian faculty members and, in addition—students. While the education that addresses mental health critically starts at many levels, we are committed in our school, and as I am sure you will hear shortly, is the Medical School, to the training of individuals who may be more appropriately geared to addressing the problems of their fellow Hawaiians.

We at the present time are graduating a critically small number of Hawaiians. To this point, we have only been able to graduate about 10 per year. We have ~~to~~ do a better job than that, and I think we can. In fact, we must.

That is what we are committed to, Senator and Mr. Akaka. I thank you very much for the opportunity to make these remarks, and to have the privilege of being here today.

[Prepared statement of Dr. Michael appears in appendix.]

The CHAIRMAN. Do you have an affirmative action recruiting program?

Dr. MICHAEL. We do, sir. We have had that for the students for some time. We have been able to do the same for Pacific Islanders—and I think very well. We have been able to do fairly well with other under-represented groups such as Philippinos. We have not made the kind of progress that we should be able to make in either the student body or on the faculty with Hawaiians, and that is also a key to addressing issues such as this.

If I am here next year to testify, I hope you will ask the question again.

The CHAIRMAN. I will, sir. Thank you very much.

Dr. Izutsu.

STATEMENT OF SATORU IZUTSU, M.D., PROFESSOR OF PSYCHIATRY AND PUBLIC HEALTH, SCHOOL OF MEDICINE, UNIVERSITY OF HAWAII

Dr. IZUTSU. Thank you.

Good afternoon, Senator Inouye and Congressman Akaka and members and staff of the Senate Select Committee on Indian Affairs. I appreciate this opportunity to present testimony on Native Hawaiian mental health issues on behalf of Dr. Christian Gulbrandsen who is unable to be here. He is the acting dean of the School of Medicine.

You have heard of the two major reports. One was the E Ola Mau report, and the other was of the Native Hawaii Educational Assessment Project of 1983. The E Ola Mau report was in 1985. They have documented the severe lack of mental health services to Native Hawaiians in our State. All the speakers today, I believe, will be echoing the tragic findings of those reports.

What has happened and is presently happening to Native Hawaiian mental health since the 1983 and 1985 publications mentioned above is a matter of grave concern. Since 1983, the mental health needs of Native Hawaiians have not decreased.

The 1985 Alu Like report indicated that Native Hawaiians ranked second among ethnic groups in the State of Hawaii for substance abuse. This fact is illustrated at Queen's Medical Center, the major psychiatric emergency facility. Our university psychiatric emergency service at Queen's reports a frequency of 1 to 2 Native

Hawaiian patients per week being treated for amphetamine psychosis, as an example, over the past two months in comparison to three non-Hawaiian patients treated for the same problem during the same two-month period.

Amphetamine psychosis is a mental disorder caused by the use of amphetamines called "crystals and ice" on the stress in which a person will experience hallucinations, delusions, and be out of touch with reality. Often, they will be at high risk for suicidal and/or homicidal actions.

If this trend continues, there could be an incidence of amphetamine psychosis as high as 25 percent for the Native Hawaiians as compared to 4.6 percent for non-Hawaiians. Almost all the Native Hawaiian patients treated for amphetamine psychosis were residents of the Waianae Coast, and area on this island that has a predominantly Native Hawaiian population.

Another significant facet of mental health need is the development of the future leaders, role models, and healers for Hawaiians and non-Hawaiians among our Native Hawaiian medical students who themselves will become involved at the very core of planning, development, implementation, and research. The John A. Burns School of Medicine has a successful record of Native Hawaiian students entering and graduating from the University of Hawaii. Native Hawaiians make up about 7 percent of our medical students, and from that number, 90 to 95 percent graduate.

In spite of this success, Native Hawaiian students are over-represented in areas of academic difficulty and require remedial work, tutoring, counseling, and mentorships with the help of Native Hawaiian medical professors such as Dr. Kekuni Blaisdell.

At first glance, one may make the erroneous assumption that perhaps Native Hawaiian students are not as intelligent as our non-Hawaiian students, and, thus, the majority of remedial and tutorial programs are geared toward increased immersion in memorizing and adapting to the predominant Western learning model.

However, Native Hawaiian faculty such as Nanette Judd, Coordinator of the Imi Ho'ola program which is our medical school's premedical affirmative action program through which a majority of our Native Hawaiian students enter medical school and Dr. Naleen Andrade, Assistant Professor and Director of Medical Student Education in our Department of Psychiatry have recently brought to my attention another hypothesis for the academic problems of our Native Hawaiian students. These faculty assert that it is not the student who has failed the educational system but rather the educational system that has failed the student.

More specifically, the predominant learning model that currently exists in our educational system is dialectic, that understanding and learning occur through a dialogue of questioning and discussing abstract, intellectual theories and ideas. The Native Hawaiian learning model which Dr. Andrade describes as Na'au 'ike pono is that understanding and learning occur by an empathetic process in which one observes, listens, and experiences, in reality or vicariously, before dialog occurs. Thus, questions are put forth only after one has shown the patience and discipline to be an empathetic explorer of knowledge rather than an objective observer questioning a phenomenon from which you have purposefully removed yourself.

Ultimately, the goal is to acquire the understanding necessary to reach and maintain pono, a state in which a balance occurs between the actual and theoretical, the concrete and abstract, the physical and spiritual, cognition and emotion. This balance allows for responsible, creative problem solving which is the same goal of our present educational system. In other words, although their process of learning is different, both the Native Hawaiian and the predominant Western educational models strive for and, when successful, achieve the same ultimate goal of producing the creative problem solver.

From a mental health standpoint, it appears that our educational system perpetuates an attitude that the Native Hawaiian way of learning is inferior to the Western way. This attitude is not only false but suggests a kind of institutional racism. It takes but a little effort to imagine the loss of self-esteem and self-confidence a Native Hawaiian student, raised with the Native Hawaiian way of learning, must endure and overcome when a demand is made for them to reject their own way of learning.

Could these students learn more effectively if we encouraged and guided them to continue their own cultural way of learning? As a result of Nanette Judd's and Dr. Naleen Andrade's hypothesis, we are beginning to develop programs that would address the need to encourage and guide our Native Hawaiian and Pacific Islander students to utilize their own cultural learning models to master the medical school curriculum. These two faculty members as well as other Hawaiian and non-Hawaiian faculty are involved in this endeavor.

A major limiting factor in our medical school initiatives to address Native Hawaiian mental health needs is funding. Programs require not only a commitment of time and effort but a commitment of financial resources. Legislation that could provide the necessary funding would be invaluable to address the Native Hawaiian mental health needs.

I would like to close by noting that since the 1983 and 1985 Native Hawaiian health reports were published, a small but significant change for the betterment of Native Hawaiian mental health was accomplished by the John A. Burns School of Medicine. We graduated the first Native Hawaiian woman psychiatrist from our residency program and currently have Drs. Noelle Yuen, Linda Nahulu, and Kenneth Luke, all Native Hawaiians and graduates of our medical school, as resident physicians in psychiatry. Continued Federal, State, and community support for the training of these and other Native Hawaiian healers is crucial for promoting the health, both mental and physical, of all Hawaiians.

The John A. Burns School of Medicine continues to look for ways to participate with all in the community in trying to solve the mental health issues which face Native Hawaiians. Your presence here today demonstrates in a very real way your sensitivity and commitment to ensure that what seems to be impossible today will someday become inevitable.

Thank you.

[Prepared statement of Dr. Gulbrandsen appears in appendix.]

The **Chairman**. Thank you very much, Doctor.

Do you in your courses provide classes in Native Hawaiian medicine?

Dr. **Izutsu**. That is discussed in the seminars. I think that there are interested faculty in our pharmacology department as well as among our medicine faculty who are interested in this area and will discuss this in our seminar situations. I think the students themselves who go through our Imi Ho'ola program and our Kulia program bring this up continuously.

The **Chairman**. Are these courses just limited to Native Hawaiian or are they open to all?

Dr. **Izutsu**. No; they are open to all. They are not courses, but they are discussions as they come up in the medical discussions of the treatment of patients.

The **Chairman**. Thank you very much, Doctor.

Ms. Gomes.

STATEMENT OF KU'UMEALOHA GOMES, MEMBER, MENTAL HEALTH TASK FORCE, NATIVE HAWAIIAN HEALTH RESEARCH CONSORTIUM, UNIVERSITY OF HAWAII

Ms. **Gomes**. Aloha and welcome back to Hawaii.

Before beginning my testimony, I would like to say that although I give this testimony on behalf of Dr. Marsella, the only way I agreed to do it was if he gave me pretty much free rein, because as a Native Hawaiian, this issue is very close to me and to my people. So, the height of the testimony is what I feel.

I wish to testify in support of the efforts of the Select Committee on Indian Affairs to establish a comprehensive community-based mental health initiative to address the mental and emotional health needs of Native Hawaiians.

I was involved in the E Ola Mau: Native Hawaiian Health Needs Study in 1985, and I am a co-author of the Mental Health Task Force Report.

You stated earlier some of our findings in terms of the high proportions of social problems, alcohol and narcotics use, school performance impairment, suicide, child abuse and neglect, residence in correctional institutions, academic failure and poor school performance, and high levels of stress that we found through our study. Also, you and Dr. Lewin both quoted with regard to the fact that Native Hawaiian under-utilize existing mental health services and facilities.

The reason for this is that the structure of these services fails to accommodate the needs of Native Hawaiians and ignore our cultural values and life styles, despite the fact that Hawaiian values and norms are important to the Native Hawaiian and the beliefs of the Native Hawaiian are important to the description of their problems. However, these values are norms are almost never considered in treatment.

Although many health professionals are sincere in their efforts to help the Native Hawaiian, there is usually no training in Hawaiian culture, and this training also is not given a high priority.

In order that significant changes are made to improve the status of the Native Hawaiian, we must look to the source of discontent.

It is true, and the statistics tell no lies about the high rate of unemployment among Native Hawaiians. It is true and we cannot ignore the fact that Native Hawaiians are in residence in correctional facilities. It is true, despite the small strides in this area, that there are high incidences of academic failure and poor school performance among Hawaiian school age children.

It is true and we cannot bury the fact that there are high rates of child abuse and neglect among Native Hawaiians. It is true, and we can continue to blame these victims, that there are higher proportions of social problems in the Native Hawaiian community in comparison to State-wide population estimates.

All of the findings in the E Ola Mau: Native Hawaiian Health Needs Task Forces, the Historical-Cultural Task Force, the Dental Task Force, the Nutrition Task Force, the Medical Task Force, and the Mental Health Task Force paint a grim yet true picture of the majority of the Native Hawaiians. However, in the last five years, we have begun to see positive changes in the attitudes of the young and old in the Native Hawaiian community.

Perhaps it is not their attitudes that are changing but, rather, the system in which we live that is finally accepting the values and life style of the Native Hawaiian as being an important contribution to society as a whole. It is with the necessary change of attitude within this American system that the status of the first people of this land will be elevated.

It is with the continued efforts of committees like this and with individuals in Congress like you, Senator Inouye, that the health status of the Native Hawaiians will improve at a faster rate. It is with the continued distribution of monies for program planning and implementation that the Native Hawaiian will once again realize his dream of being self-sufficient and self-determining.

We know and we cannot ignore the history of the Native Hawaiians and the fact that it is their lands that were taken away and their government that was overthrown. We cannot discount the Native Hawaiian spirituality and their psychological and emotional attachment to their precious 'aina.

These people were once a thriving nation of skilled artisans in navigation, irrigation, farming, canoe and house building. Their lives focused on the perpetuation of their race, and children and elders played a significant role in their everyday lives.

We have asked ourselves the question, what happened to make such gross changes in a once healthy and thriving nation of proud people? We know the answer, and that is why we are here today to support the efforts being made to provide assistance and restore to the Native Hawaiians what they so rightfully deserve.

The Mental Health Task Force of the E Ola Mau: Native Hawaiian Health Needs Study made its recommendations, and these are included in the report that you have ready access to and have probably read many times in the past year, Senator Inouye. Allow me to reiterate in summary those recommendations:

The renewal and perpetuation of Hawaiian values to assist in the promotion of pride, self-confidence, and power among Native Hawaiians;

The development of autonomous mental health services which are community-based and controlled by Native Hawaiians and which are committed to Hawaiian culture, history, and language;

The development of educational training programs within the school system and within higher education institutions to facilitate an increase in the number of Native Hawaiian mental health professionals;

The implementation of cultural sensitivity and awareness programs under continuing education program auspices for mental health services providers; certification of professional competence for dealing with Native Hawaiians should be required;

The development of political, economic, educational, and social programs to encourage empowerment; and

The development of more programs to increase the availability of land to Native Hawaiians since it is from a relationship with the 'aina that all mental and spiritual health flows.

The research recommendations proposed by the task force were shaped by the mental health needs which the study revealed and by the following guidelines for conducting relevant research:

Mental health researchers should be cognizant of and sensitive to Native Hawaiian culture, history, and language.

Research should be directed toward building community competence.

Research should involve Native Hawaiian people in the planning, conduct, and interpretation of investigations. Dr. Michael has already talked about this a little bit, and I won't go into the research recommendations, because those were already covered.

In closing, the needs of the Native Hawaiian people continue to require the focus of concerned individuals like yourself and others in this room. The Native Hawaiians have experienced much pain, degradation, and humiliation for generations. They have begun to take their future into their own hands and are beginning to make significant and positive impacts on their community.

The University of Hawaii is dedicated to improving the status of the Native Hawaiians. We are focused on a commitment to elevating the status of these proud people whose life style is so important to our understanding of the history of Hawaii.

We look forward to participating in efforts with you that will involve the creation of a comprehensive community-based mental health initiative.

Mahalo for this opportunity to testify on behalf of your efforts.

[Prepared statement of Mr. Marsella appears in appendix.]

The CHAIRMAN. Thank you, Ms. Gomes.

In your report, you stated that notwithstanding the horrendous statistics, Native Hawaiians under-utilize mental health services provided by the Department of Health, and you cite as the reason the failure to accommodate Native Hawaiian cultural values and practices. Can you expand on that? What do you mean by failing to accommodate Native Hawaiian cultural values and practices?

Ms. GOMES. I am glad you asked me that question, Senator Inouye. Prior to becoming a student at the university, I worked for the Division of Mental Health as a counselor in Waianae, and I worked there from 1975 to 1987.

In my experience in working with mental health, one of the things that used to really behoove me as a Native Hawaiian, especially working in a Native Hawaiian community, was that in all of our experience, we never did get any training. I was raised as a Native Hawaiian, but other people who came into the facility never did get any training in working with Native Hawaiians, did not understand what their culture was, did not understand what their values were, did not understand the language they used, did not understand the Hawaiian language and how that was important and how it was incorporated into their everyday lifestyle, did not understand how they viewed their healing or how important their family was in the healing process.

In the Mental Health Division, I never in all of my years of experience went to a workshop or any kind of training or was asked to seek training that would help in servicing Native Hawaiians.

The CHAIRMAN. I thank all of you for patiently waiting to testify this afternoon. Your statements will be extremely helpful to us as we assess the problems nationwide and, hopefully, come forth with a resolution of a truly community-based program utilizing traditional native cultural values and practices.

Thank you very much.

Our next panel consists of the Executive Director of Alu Like, Inc, Mr. Masaru Oshiro; the Director of Program Evaluation and Planning of Kamehameha Schools/Bishop Estate, Dr. Ormand Hammond; and the Vice President of E Ola Mau, Dr. Naleen Andrade.

Mr. Oshiro.

STATEMENT OF MASARU OSHIRO, CHIEF EXECUTIVE OFFICER, ALU LIKE, INC., HONOLULU, HI, ACCOMPANIED BY HAUNANI APOLIONA, HEALTH AND SOCIAL SERVICE PLANNER, ALU LIKE

Mr. OSHIRO. Aloha, Mr. Chairman, Congressman Akaka, and staff of the Senate Select Committee on Indian Affairs.

I have on my right Ms. Haunani Apoliona who is the chief health and social services planner for Alu Like and is the organization's liaison person to other Hawaiian organizations relating to health and social services.

My name is Masaru Oshiro. I am Chief Executive Officer for Alu Like, Inc., a private non-profit community-based organization serving the Native Hawaiian people State-wide.

For the past 13 years, Alu Like has implemented a full range of human services programs through partnerships with Federal, State, and private corporate entities.

In this connection, the issue of adequate mental and emotional health care for Native Hawaiians is central to the pursuit of Alu Like's goal of achieving social and economic excellence for the people it serves. Attached to this testimony are relevant citations from various mental health needs studies, but suffice it to quote one such finding which states that "many Hawaiians are faced with the dilemma of trying to adjust to demands of contemporary island society, to meet minimum standards of living, while attempting to preserve long held traditional patterns of behavior and values which define the essence and distinctiveness of being Hawaiian."

Despite the well documented needs for mental health services, current surveys clearly show that services are not reaching many Native Hawaiians in the State, especially those in isolated communities.

Based on these findings, Alu Like strongly believes that leadership in responding to the mental health needs of Native Hawaiians must come from the Hawaiian community. This leadership in working cooperatively with existing public mental health agencies and institutions will best meet the needs of Native Hawaiians without duplicating limited public resources.

A comprehensive community-based mental health policy initiative must incorporate the following principles:

First, that community-based care will mean "comprehensive, quality care delivered as close to the client's home community as possible in ways which are sensitive to the client's culture and beliefs." This statement is a statement by the Association of American Indian Physicians, and Alu Like's Board of Directors has adopted this as its definition.

Second, that the community-based approach will seek out Native Hawaiian community involvement and participation in its development and seek to harness Native Hawaiian community strengths.

Third, that lasting impact can only be achieved through a systematic, comprehensive approach resulting in a well integrated system of components for primary health care and service delivery. These components include health planning and monitoring, traditional Native Hawaiian health professionals, outreach, primary health care, and health promotion.

Fourth, that appropriate health care is the result of health services provided through a system that is accessible, acceptable, available, appropriate, and accountable to the people it serves.

Alu Like stands ready to participate in the development of mental health policy initiatives which are culturally relevant and acceptable to the Native Hawaiians. Through Alu Like's State-wide community-based network, together with other Hawaiian organizations, we are prepared to mobilize a system of communication to seek input from individuals who have integrated traditional healing practices in their service to people in the community. Our long established data collection and research capabilities can provide valuable historical and current information which are critical to any comprehensive, community-based mental health policy analysis.

Alu Like's continuing relationship with health related Native Hawaiian organizations such as E Ola Mau, Inc. and Hale Ola o Ho'opakolea, Inc., and our ongoing collaborative work with other Hawaiian organizations places us in a strategic position to assist State and Federal agencies in addressing these important issues.

We look forward to this cooperative effort with the Select Committee on Indian Affairs. For your information, we have transmitted to your staff the full texts of the studies that I cited earlier.

Thank you for the opportunity to testify.

[Prepared statement of Mr. Oshiro appears in appendix.]

The CHAIRMAN. Thank you very much, Mr. Oshiro.

You touched upon a facet of the problem which we consider very important, and that is even if this program is successful in accommodating traditional cultural values and practices, if the availability of services is not made known to Native Americans, it will continue to go unutilized. You have, I believe, the only State-wide organization that can accomplish this.

Are you prepared at this moment to serve as the conduit of information?

Mr. OSHIRO. Alu Like will be more than happy to take any leadership or assignment in this area to provide that information to the Hawaiian community.

The CHAIRMAN. I thank you very much.

Dr. Hammond.

STATEMENT OF ORMOND W. HAMMOND, DIRECTOR, PROGRAM EVALUATION AND PLANNING, KAMEHAMEHA SCHOOLS/BISHOP ESTATE, HONOLULU, HI

Dr. HAMMOND. Thank you. Good afternoon, Senator Inouye, Congressman Akaka, and members of the committee.

My name is Ormond Hammond. I am Director of Program Evaluation and Planning at the Kamehameha Schools. I am speaking today on behalf of Mr. Myron Thompson, trustee of the Kamehameha Schools/Bishop Estate, who is unable to be here.

As a private educational trust, our mission is to assist Native Hawaiians, in their efforts to achieve their highest potential as effective participants in contemporary society. The issue of mental health is of deep concern to us, as it cuts across not only education but all aspects of participation in today's world.

As Mr. Thompson has eloquently stated in past testimony before this committee, we are most grateful for the attention and support provided by you and the committee, Senator Inouye. Although we often must cite the severe and long standing social, educational, and health problems of the Hawaiian people, much progress has been made and is being made now toward addressing these.

In particular, the recent passage of legislation providing needed educational programs for Native Hawaiians is a real step forward. A high priority among these are the family-based education centers. The Kamehameha Schools/Bishop Estate has developed and tested such centers, and we have come to share the view of many experts in the field that the earliest periods of learning provide the keys to later school achievement.

There is no need to reiterate the long list of social and educational needs of Native Hawaiians which recent studies have documented. Suffice it to say that mental health has been found to be a major need area.

The Native Hawaiian Educational Assessment Project suggested that many of the modern problems afflicting Native Hawaiians can be traced to the stresses caused by two centuries of rapid culture loss. The Native Hawaiian Health Needs Study Mental Health Task Force found that many modern Hawaiians do not seek help from existing mental health services which are not attuned to culturally based beliefs and concepts. Instead, many prefer the more personal involvement of traditional healers.

There are some traditional Hawaiian concepts which may prove extremely valuable to modern mental health care and should be carefully assessed and made available. One of these is ho'oponopono. Mr. Thompson has commented on this in previous testimony. I would like to quote his words on this subject:

> I believe that an intensive professional inquiry into the principles of ho'oponopono—to set to right—will elicit basic similarities with present day psychotherapeutic theory. As such, the extensive present day underground practice of ho'oponopono can be legitimized, described, and put into teachable units for use by our mental health practitioners. In addition, our present day elders who are providing ho'oponopono in its present form can be assisted to sharpen their skills based on clear, documented theory.

This applied research into Native Hawaiian mental health concepts, then, is the first recommendation for use of the new funding. It is important that the new knowledge be put into practical, usable form, and a place where it should be immediately usable is in the family-based education centers to which I referred earlier. Techniques which can reduce stress and conflict within families are most needed in this all-important early crucible of learning for the young child.

The second recommendation concerns training for Native Hawaiian as well as non-Native Hawaiian professionals and non-professionals. This should be an integral part of the process.

The thorough investigation of Native Hawaiian mental health concepts, for example, must involve Hawaiian researchers, even perhaps Hawaiian models of doing research. Benefitting from this will be Native Hawaiian practitioners who wish to remain outside the professional health care system, Native Hawaiians who wish to become professional health care providers, and non-Native Hawaiians seeking effective therapeutic systems.

Mr. Chairman, along with the many negative statistics that we have reported to your committee, there have been some very positive indicators. The Hawaiian culture, despite severe losses, remains a source of pride and inspiration for many modern Hawaiians. In addition, it has provided the nation and the world with some cherished concepts.

What we now know about beliefs such as lokahi—harmony among body, mind, and spirit—suggests that the Hawaiian culture was far ahead of western civilization in recognizing the holistic nature of what we call health. Modern medicine seems to be headed in this direction. We hope that this new initiative will allow Hawaiian culture to take its rightful place at the vanguard of this movement.

Thank you, again, Senator. It has been a privilege to present this testimony on behalf of Mr. Thompson. He is currently accompanying a group of Kamehameha students representing the State of Hawaii at the 5th International Festival of Pacific Arts in Australia, and he sends his fondest aloha.

Please let me know if I or anyone at Kamehameha Schools can assist in the further development of this important initiative.

Thank you very much.

[Prepared statement of Mr. Hammond appears in appendix.]

The CHAIRMAN. I thank you very much, Dr. Hammond.

As you are aware, much of the funds appropriated recently by the Congress are a recognition of Kamehameha's active and successful involvement in working with children at a very early stage, the maternal care centers and such. Since most of the funds will be administered by Kamehameha and channeled through Kamehameha, I would like to know how you will use these moneys.

Are you planning to utilize Native Hawaiian health practitioners or kupunas and such?

Dr. HAMMOND. Yes; the use of the Native Hawaiian practitioners in the community is an integral part of the development of the services that are provided. Of course, in the family-based education centers, we are talking about beginning to work with young parents even before childbirth. So we try to integrate into the curriculum in the process some of the traditional beliefs and practices and bring out the best of those and combine them with the best of what we know from modern studies of early childhood into an integrated kind of package.

The CHAIRMAN. Someone can help me. Do we have a directory or list of Native Hawaiian health practitioners? Are they licensed to practice? What is the situation today?

Dr. HAMMOND. Perhaps Dr. Andrade could answer that better than I. We have informal listings and keep records in our files of those folks who have assisted and been involved, but in many cases, they are simply unregistered and are working on their own through contacts in the community and have no formal recognition within the educational or mental health care system.

The CHAIRMAN. Many of the old-time Chinese go to Chinatown regularly to visit these herb doctors. There are two shops, I think, in Chinatown with a full array of everything from lizards to beans.

Do we have any shop or store of a similar nature for Native Hawaiians?

Dr. HAMMOND. There really is no central location as such. I think much of the communication within the Hawaiian community is by word of mouth, through relatives, through ohana, through long-term contacts within the community, and it is done in that sense.

Mr. AKAKA. Mr. Chairman, may I further ask the question of growing herbs or Hawaiian medicines? Is there an effort along that line in Hawaii?

Dr. HAMMOND. We at Kamehameha Schools have not gotten into that area ourselves. I know there are many individuals, again on their own through their informal contacts and so on, who are deeply involved in that and individuals with whom we have worked who have quite a deep knowledge of herbal medicines and traditional healing practices that can be brought into play.

Again, it often comes about when we are trying to do something with modern families, and they have heard of some western therapy which is available, and they compare that with what they have heard of the traditional Hawaiian healing practices.

The CHAIRMAN. I brought up this question, because in many of the commercials we see on television, they advertise a product that originated in Hawaii, aloe, and none of the Hawaiians are making money out of that, but it started here. I am just wondering if we do have Hawaiians who are involved in this business.

Dr. **Hammond**. I think, in general, the point of the testimony—and I know Mr. Thompson's sentiment also—is that Hawaiian culture has already contributed so much to the world, often without recognition of that contribution. And there is so much more to be contributed.

I think we need to look very closely at the negative statistics and follow them and be able to evaluate our progress. On the other side of the coin, we need to be able to state how many of these concepts are very beautiful and wonderful and should be shared with the rest of the world in a very positive sense.

The **Chairman**. Thank you very much. Your testimony is most helpful.

Dr. Andrade, please proceed.

STATEMENT OF NALEEN ANDRADE, M.D., VICE PRESIDENT OF E OLA MAU, HONOLULU, HI

Dr. **Andrade**. I am so glad that you asked that question. In E Ola Mau, which is a Native Hawaiian professionals group, we have the Olalapaou project. In that project, the work we are doing is three-fold.

First, from a historical standpoint, you have to understand why the kupuna lapa'au, the practitioners of herbal medicine and Hawaiian medicine do not go public, do not have a shop. That reason is because of history that we have already heard this morning and I won't get into, but it was a very decisive suppression by the powers that were in Hawaii for Native Hawaiian medicine not to be practiced. It was demonic, and it was satanic, and it was pagan.

So, our practitioners went underground. To this day, they are very fearful of coming out of that. One of the major roles that the E Ola Mau has made as well as the Office of Hawaiian Affairs is to bring these practitioners into a forum before the public and to legitimize their work and validate their work for the rest of the general public.

E Ola Mau as well as Alu Like have worked together to have at least two major conferences in Hawaii. E Ola Mau is continuing the work of the last conference by helping the kapuna at their request to continue the documentation of their remedies, their knowledge of herbs, and their knowledge of the healing chants that go along with that.

The second phase of our work has to do with an interface with the Department of Hawaiian Homelands. They are looking into a creative project of leasing for periods of time to interested laou healers plots of land on which they can grow their herbs and actually have gardens of herbs on which they can then teach students about the herbs and the healing process. So, I think exciting things are happening about this.

The third major community thrust that has occurred already—and perhaps this is really where it all began in a major sense—is the work of Alu Like. What Alu Like did through their support on the Hale Ola Ho'opakolea project is to encourage kupuna lapa'au, traditional healers, to begin to interface with the mental health care system, the western system, and they have been encouraged to the extent that medical legal liability can allow the practices of Native Hawaiian healing.

I think legislation can really help our kapuna lapa'au in terms of medical legal liability, because that is the problem E Ola Mau is faced with right now. It is how we allow our practitioners to practice within the realm of safety without being sued.

Finally, I think you are going to be visiting one of our sister organizations on Kauai. Because your schedule would not permit your going to Hawaii where we have our lapa'au healers, E Ola Mau is facilitating and going to where you folks will be on Kauai, and you will meet Papa Henry 'Auwae who is really one of the most highly respected lapa'au healers in herbal medicine.

The CHAIRMAN. So, you do have a directory of practitioners?

Dr. ANDRADE. Yes. I think the Office of Hawaiian Affairs probably has a large list based on the two conferences that they held. E Ola Mau also has a list of those individuals some of whom have asked not to be known publicly at their own request, and this is because of their rituals, their beliefs, and their desire to have privacy.

I think actually moving towards a capitalistic idea in terms of the usefulness of aloe and other Native Hawaiian remedies is something that we certainly should look to in terms of an economic base for the future.

The CHAIRMAN. You received your training according to western practices, your medical degree and your specialty in psychiatry. Do you find it difficult to work with faith healers and such?

Dr. ANDRADE. Hawaiian faith healers? Not at all. In fact, I have found it harder to work with western healers.

One of the biggest struggles for me as a Hawaiian medical student was to remain Hawaiian. Dr. Izutsu elaborated on the dialectic as a model of learning at our medical school. I was taught as a child to learn from the concept of na'au'ike pono, and for me to be immersed in a way of learning that was so unfamiliar and so foreign would be comparable to asking me to learn a foreign language overnight. I could not do it very readily. It took immense hours of study, and I always felt so demoralized, as if the way I had learned was somehow so wrong.

Finally, one day, in talking to my parents about this, they said why must you learn their way? Why can't you be consistent and learn the way you have always learned?

So, I did. From that moment on—and this occurred much later in my life, in fact, in medical school—it was as if a light had been turned on. Suddenly, the learning for me in terms of histiology, chemistry, and physiology became so much more easy. At one time, I spent six hours in trying to master biochemistry, and after I was allowed to learn this way—and I do say allowed to learn this way—that was cut in half.

The other persons who were instrumental in encouraging me the way I had been brought up to learn were Dr. Kekuni Blaisdell who is a Native Hawaiian in the Department of Medicine and our dean, Terrance Rogers who, when I talked to him and told him I felt so frustrated and so isolated said, well, be what you are and then see what happens, and I was allowed to be Hawaiian.

So, when I interface with Hawaiian healers, I feel very comfortable. Their rituals resonate within me when I hear their chants. The herbs are very familiar to me. I used many of them as a child.

The thing that does bother me as a western trained professional is that often so much of the Hawaiian knowledge has been intermixed with Christianity and so much of it is a syncretistic blend. By syncretism, I mean a very illogical meshing together of different philosophies. What I would like to see happen is that Native Hawaiian healers can assert Native Hawaiian healing techniques more precisely within the same vein of Native Hawaiian tradition and belief.

The CHAIRMAN. As a western trained psychiatrist licensed to practice in the State of Hawaii, are you permitted to use Native herbs and Native practices in your work?

Dr. ANDRADE. I am not permitted to use Native herbs in my work and prescribe them.

The CHAIRMAN. Do you mean the law prohibits you?

Dr. ANDRADE. As a prescription. I could not write a prescription, say, for koko'olautea to soothe and relax at the end of the day. I could not write it as a prescription. It is not a valid medicine and not recognized.

However, as a psychiatrist practicing psychotherapy, I have actually utilized Native Hawaiian techniques and developed some of my own skills in that. Dr. Noreen Mokoau, professor at the School of Social Work, is doing the same in her practice.

Also, I have the specific psychotherapy technique that I am developing which involves the use of imaging, again, in the vicarious na'au 'ike pono when you vicariously image something and from that imaging, help the patient to get to that place in a manner that is a process which we call lokahi. Those are case studies that I hope to publish within the next year, because they have all been successful.

Whether or not that falls into the Hawthorne effect of just paying attention to a patient, I am not sure, but I do believe that there is a need to practice Native Hawaiian belief in psychiatry.

The last thing I would like to say, because it is in response to this question as well as another question that you asked Dr. Izutsu about our School of Medicine, is that I would like to elaborate a few more things. At the John A. Burns School of Medicine for the first time this past year, I have begun teaching a course in the Department of Psychiatry to second-year medical students on Native Hawaiian traditional healing beliefs and practices. This is as a preface for their third and fourth year courses of study.

In the third year course, what we have begun in the Department of Psychiatry is a regular immersion of our students out on the Waianae Coast to visit the Native Hawaiian projects out there such as Hale Ola o Ho'opakolea and visit the healers and interact with the kupuna lapa'au there so that they are actually immersed in the culture. For so many of these students, it is the first time in their lives they have ever experienced it.

Finally, for those students who have a continued interest, we have a fourth year externship for them to spend a month out in Waianae and work more intensively with people in the community. These are all programs that the dean and the chairman of my department with the guidance of our curriculum committee have encouraged us to pursue.

Nanette Judd and myself, as well, are beginning to develop a counseling project for our Native Hawaiian and Pacific Islander students in the Imi Ho'ola and Kulia program which are the two affirmative action programs. What we are developing is a research design that will help us follow, based on an hypothesis that Dr. Izutsu presented, a group of students from year one to year four when they get out and see if there is a significant difference in their academic performance at the end of the year.

So, exciting things are happening. What we hope is to interface in the future with the healers involved in E Ola Mau as well as the Center for Hawaiian Studies and begin actually having a course taught at the John A. Burns School of Medicine in lau lapa'au healing itself. That is in the future.

I think the more faculty members we have of Native Hawaiian descent the better our chances that that will actually occur.

The CHAIRMAN. We have in our communities men and women who are licensed to heal. Some call themselves ministers. Others call themselves doctors. Do we have any Native Hawaiian healers licensed to practice?

Dr. ANDRADE. In terms of Native Hawaiian healers specifically.

The CHAIRMAN. Utilizing Native Hawaiian practice.

Dr. ANDRADE. In that sense then, we have none that are licensed. This is one of the goals for the future that E Ola Mau would like to see happen through our work and through the development of our lapa'au project.

The Chairman. Would you need legislation to authorize this?

Dr. ANDRADE. Absolutely.

The Chairman. Then you will have to go to the State Legislature.

Dr. ANDRADE. We are working on it.

The Chairman. I thank you very much.

Dr. ANDRADE. Thank you. Now I get to give my testimony. Don't worry; it is short.

I am very grateful today to speak on behalf of E Ola Mau, an organization, as I said earlier, of Native Hawaiian health professionals.

I also want to say that we could not have come about if it were not for a lot of support from a lot of people and people who took time to listen. Alu Like and Kamehameha Schools—I am very proud to sit with them on this panel because they have been some of our biggest supporters at the time when we needed to be supported. Also, Senator Inouye, Patricia Zell, and Lurline McGregor, you folks have been treasures to us in terms of listening when nobody else wanted to, and we thank you.

Today, a number of speakers will quote the E Ola Mau report published by Alu Like in 1985 which outlines the physical, mental, and spiritual devastation of our Native Hawaiian people. This report which came about largely because of the efforts of this committee establishes that, when compared to State-wide population estimates, Native Hawaiian have higher proportions of mental health problems such as substance abuse, family violence, suicide, child abuse, and so forth.

Another significant finding of the E Ola Mau report is that Native Hawaiians under-utilize our existing mental health services. Too often, our Native people enter mental health services because they are court ordered or have reached a level of such severity that they are suicidal, homicidal, or psychotic.

In my work as a professor in the Department of Psychiatry at the John A. Burns School of Medicine, I have treated far too many Native Hawaiians suffering from depression, suicidal and homicidal thoughts, and psychosis. Of course, Dr. Gulbransen elaborated upon some of the statistics that we have seen at the university's emergency psychiatry service at the Queens Medical Center.

What can be done to address these serious, life threatening mental and emotional problems? E Ola Mau would like to strongly recommend the following:

First, although the mental health needs of Native Hawaiians are critical, legislation should not set mental health initiatives above the development of a comprehensive health care plan. A major purpose and goal of E Ola Mau is developing and implementing a comprehensive State-wide Native Hawaiian health care master plan. Senate bill 136, the Native Hawaiian Health Act, introduced in Congress by Senator Inouye and this committee, is crucial to the realization of such a comprehensive approach. S. 136 was developed out of the overall recommendations of the E Ola Mau report, and it is consistent with the holistic belief and practice of lokahi.

E Ola Mau believes that introducing separate legislation on mental health issues before S. 136 is passed and funded by Congress would create a fragmentation of health care which would be detrimental to our people.

Lokahi, in practice, means that in dealing with our imperfect world, we must seek not to set one thing or person against another in a competition, because the implicit message of this kind of competition is that something or someone must be conquered. In lokahi, the ultimate goals is pono, and pono means that the way of the universe is not to conquer but to achieve balance and harmony.

Thus, E Ola Mau would recommend and urge you to set as a priority the passage and funding of S. 136 by Congress to serve as the major means through which mental health services, training, education, and research be initiated.

The second recommendation is that mental health research should be applied research involving direct clinical services. For too long, our Native people have been studies and written about without receiving any significant improvement of their health conditions. We have heard angry, bitter, and frustrated Native Hawaiians in communities throughout this State comment upon the observation that—and this is a quote that E Ola Mau in our travels has received, and I recorded it in my journal because I was really struck by it:

> Oh, those clever university professors. They come to us and ask all their questions for their research. They say, it is going to help us get better, more healthy. Then they write their papers and books and have their conferences about us. Next thing we see on the TV is they are the experts on us Hawaiians and our problems. Funny thing, they get the promotion in the university and they get famous, but we are still the same. We get nothing. How is this different from the missionaries who said they wanted to save us and then took away the things that gave us life?

And, sadly enough, there is a measure of truth in these statements, because for all the research presented in the publications on Native Hawaiian health, the subjects of these research studies have yet to receive relief.

The third recommendation of E Ola Mau is that Native Hawaiians must be leaders.

Excuse me, this was a difficult testimony to prepare. It is even more difficult to deliver.

The **Chairman**. Take your time.

Dr. **Andrade**. Thank you.

Our third recommendation is that Native Hawaiians must be the leaders and at the very core of planning and implementing programs for health services, training, education, and research. There is a false belief among some at our university that Native Hawaiians are incapable of leading health services, training, education, and research. The perpetuation and institutionalization of this kind of prejudice and injustice is perhaps the largest obstacle we in E Ola Mau must deal with.

I think it is significant that of the schools on this campus, the John A. Burns School of Medicine perhaps has the most programs and the most members and faculty of Native Hawaiian ancestry. I think it is because there is a sincere commitment and involvement and investment of time and energy to allow that to happen.

Experts and leading authorities on this campus and elsewhere, most of whom are not Native Hawaiian, have told us that we must have a track record, we must not fail, and we must succeed. Therefore, we Native Hawaiians must trust those with more experience to do it for us.

Yet, when we look at history, we find that for all the time when Native Hawaiians have not been leaders of health services, training, education, and research, there has been no significant improvement in health, and, in fact, there has been a steady trend of worsening health statistics. I am not saying that Native Hawaiians are better. I am only saying that it is time for Native Hawaiians themselves to try to heal themselves. We will make mistakes, but they will be our mistakes, and from these mistakes will come our learning.

The fourth recommendation is that the myth that the so-called "Hawaiian problem" will never be solved no matter how much money is poured into it must be dispelled. This myth is so wrong.

When you compare the Native people of mainland America to Native Hawaiians, you see that Native Hawaiians actually have a very excellent chance of success. For example, we do not have the vast geographical dispersion that the Native people of the continent have. Within 25 minutes, people from the farthest distances in our State of Hawaii can be brought together. In less than an hour if we call a meeting in E Ola Mau, we can bring people from almost every island except Niihau into Oahu or go there.

The second thing is that we share a common language. We don't speak different languages as exists on the mainland continent, and we share a common culture.

E Ola Mau believes that the implementation of the Native Hawaiian Health Care Master Plan of S. 136 which we are currently working on will have a significant impact upon Native Hawaiian health in our State.

In psychiatry and in the process of lokahi, it is considered healthy to express one's emotions in a manner that perpetuates understanding and healing. E Ola Mau recognizes the powerful and sometimes painful emotions involved in our struggle. But as Native Hawaiian healers, we will stand firm, onipa'a, in our mission to go beyond our pain and suffering and become effective citizens and leaders in our homeland.

Thank you very much.

[Prepared statement of Dr. Andrade appears in appendix.]

The CHAIRMAN. Thank you very much, Doctor, for your excellent testimony.

I feel sufficiently confident to assure you that by this September, that is, next month, S. 136 or some measure incorporating S. 136, the Hawaiian Health Care Initiative, will be the law of the land.

We will also this year before we adjourn begin our work on the mental health initiative with the hope that we will introduce it early next year and begin immediate consideration of it by the committee.

So, the work and your endeavors do bear fruit. It is coming along.

Thank you very much for your assistance.

Our next witness is Ms. Ku'ulei Richard, Director of the Hale Ola Ho'opākōlea, Inc. of Nānākuli.

Ms. Richard, welcome.

STATEMENT OF KU'ULEI RICHARD, DIRECTOR, HALE OLA HO'OPAKŌLEA, INC., ÑAÑAKULI, HI

Ms. RICHARD. Thank you.

Aloha, Mr. Chairman and members of the Select Committee on Indian Affairs. My name is Ku'ulei Richard, and I am the Director of Hale Ola Ho'opākōlea, Inc., a private non-profit, community-based organization whose mission is to promote holistic healing through Hawaiian cultural practices using the positive life styles, spiritual values, communication skills, and beliefs of Native Hawaiians.

Hale Ola Ho'opākōlea, Inc. is a relatively new cultural service center serving Native Hawaiians and other people in need whose cultural patterns are vital to their well being. Located in Nānākuli, one of four communities on the Wai'anae Coast of Oahu, Hale Ola Ho'opākōlea uses local Hawaiian counseling and resource staff.

Hale Ola Ho'opākōlea was created in 1981 in response to community demand for more culturally sensitive approaches to problems of a personal or emotional nature faced by Native Hawaiians.

Mental health services, in particular, had not been widely used and, in fact, were considered by residents to be inappropriate and ineffective. Residents and representatives at various hearings and community meetings had repeatedly emphasized the lack of cultural relevance the present services provided.

Hale Ola Ho'opākōlea was a response to these expressions of concern from the community and proposed to expand and integrate mental health care resources targeted for Native Hawaiians on the Wai'anae Coast as a major under-served population in the State.

Since its inception, Hale Ola Ho'opākōlea has provided a culturally sensitive service delivery model which others have adopted in part. The model uses, first, paraprofessionals—service providers who understand, communicate, and help those in need because of similar cultural beliefs and values; second, it uses outreach—a way of meeting people in need where they feel most comfortable; and, third, it uses the cultural practices of kupuna and kahuna lapa'au —informal lay and traditional healers whose function is to help our counselors create a bridge for Native Hawaiian clients who under-utilize the existing Western health care systems.

Delivering culturally sensitive mental health services enables Hale Ola Ho'opākōlea, Inc. to help to make a difference in the health status of Native Hawaiians.

It is with great enthusiasm that we support S. 136, for it represents a priceless opportunity for our Native Hawaiian people.

Mahalo nui loa.

Thank you for the opportunity to give testimony on behalf of Hale Ola Ho'opākōlea, Inc.

[Prepared statement of Ms. Richard appears in appendix.]

The CHAIRMAN. Thank you very much.

How many years has your organization been in existence?

Ms. RICHARD. We were started in 1981, so for the past seven years. We started with Federal monies, and now we are totally funded by the State of Hawaii, the Department of Health, Mental Health Division.

The CHAIRMAN. And what is your annual budget?

Ms. RICHARD. Our annual budget fluctuates a little bit. It is about $175,000.

The CHAIRMAN. How many client patients do you help?

Ms. RICHARD. We help between 400 to 500.

The CHAIRMAN. A year?

Ms. RICHARD. Yes, a year, and let me just explain a little bit. Some of these are long-term clients. We consider clients long-term if they are helped longer than three months. Quite a few of them are short-term. They come in and they are under stress because they are being evicted from their homes. We help them to try to deal, one, with that stress and, two, to help them fill that basic need, looking for a house or maybe a relative that they can stay with. So, quite a few clients are short-term.

The CHAIRMAN. How large is your staff?

Ms. RICHARD. I have three paraprofessionals full time, myself, and an administrative secretary.

The CHAIRMAN. Where did your staff personnel receive their training?

Ms. RICHARD. We initially received training from various sources. We were trained in ho'oponopono by Lynette and Richard Palignawan who themselves were taught the process by Mary Kaena Pukui, from different agencies on the coast, and by different professionals.

The CHAIRMAN. What is your success story?

Ms. RICHARD. We feel that we have been very successful. We hear a lot from our clients who say they feel comfortable in coming to us. They don't feel that there is a stigma on them, because Hale Ola is not a western health center where you walk in and there are inner offices and you have to be directed to these offices.

Our building is very open. We have a banyan tree right outside our building so counseling can take place outside. I believe we have been very successful.

The CHAIRMAN. What is your relationship with the professional community of psychologist and psychiatrists?

Ms. RICHARD. We work closely with the mental health center on the coast. We also work with different clinical psychiatrists. We work with social workers from Queen Lili'uokalani Children Center.

The CHAIRMAN. Are you telling me that they refer cases to you?

Ms. RICHARD. Most of our referrals are coming from the mental health center, but, yes, we also receive referrals from different agencies. We work with the professionals in these agencies, because we ourselves cannot provide all the expertise or the help. We know of other agencies on the coast and in Honolulu that we can refer to.

We are saying that, yes, we have some expertise in the values and the beliefs of the culture, but we don't know everything, and we look for outside help and tap into them.

The CHAIRMAN. Then your method and your practice has been recognized and approved by other members of the health delivery community.

Ms. RICHARD. I believe so.

The CHAIRMAN. Congratulations.

Ms. RICHARD. Thank you.

Mr. AKAKA. Mr. Chairman, may I ask, how prevalent are your services, or are your services limited to a particular area.

Ms. RICHARD. We service the residents of the Wai'anae Coast, but we have not turned anyone down if they are looking for service, say, in ho'oponopono or in lomilomi from outside of the area. Because of our present funding, our priorities have to be set.

The CHAIRMAN. Yours is a non-profit organization?

Ms. RICHARD. Yes, it is.

The CHAIRMAN. Do you charge your patients a minimal fee?

Ms. RICHARD. At this time, no. Our services are free.

The CHAIRMAN. I thank you very much.

Ms. RICHARD. Thank you.

The CHAIRMAN. Our final panel consists of the Hawaiian Nurses' Association, and the Nurses' Association will be represented by Ms. Fern Clark. We also have a representative at large of the Hawaii Psychological Association, Ms. Sandra Paulsen.

Welcome and please proceed, Ms. Clark.

STATEMENT OF FERN CLARK, HAWAII NURSES' ASSOCIATION, HONOLULU, HI

Ms. CLARK. Thank you. Good afternoon, Chairman Inouye, Congressman Akaka, and members of the Select Committee on Indian Affairs. My name is Fern Clark, and I am a public health nurse of Hawaiian ancestry working with the Hawaii State Department of Health.

I am testifying today on behalf of the Hawaii Nurses' Association at the request of Geri Marullo, our executive director. The Hawaii Nurses' Association is the professional organization speaking for Hawaii's 7,000 registered nurses who provide health care services in hospitals, nursing homes, and in the community.

The profession of nursing considers as one of its primary responsibilities efforts to shape the development of quality and cost efficient health delivery systems. We also acknowledge the attention which must be given to accessing these health services to the people who need them most.

The concept of community-based health systems, because of the coordination and collaboration which it supports as well as the accessibility it affords through outreach, is not only cost efficient but also addresses three vital requirements which the Hawaii Nurses' Association has assessed as essential in rendering health services to populations who need them most.

First, we need to coordinate existing resources, services, and programs from the broad periphery, both public and private sectors, into meaningful focus for the recipient.

Second, we need to reach out to clients with approaches which are sensitive and responsive to their culture and circumstances.

Third, we need to persevere in our efforts to access these services to clients on a continuum.

In Hawaii, the population presently most needing of this kind of focus is the Native Hawaiian. Their present health plight reveals them to be highly vulnerable to disease as evidenced by the broad spectrum of both physical and mental and social disorders which plague them today which, in the interest of time, I will defer from reiterating.

What is more, the statistics reflect that this population generally shows higher rates of receiving either no medical care, or suboptimal care, which is a major reason for the continuing health decline they experience today.

The scope of these findings gives us the first important cue that we in health services cannot separate psychological from somatic functioning, particularly as focus is given to Native Hawaiian clients who culturally view the harmony of body, mind, and spirit as their measure of wellness. Supportive documentation of the importance of this cultural consideration is found in the 1985 E Ola Mau study on Native Hawaiian Needs which also noted three important components of Hawaiian culture which have a direct implication for how health services should be provided to this group. The components that I refer to are:

Their spiritual values which address the spiritual significance of illness;

Their tendency to minimize risk which reflects the cultural emphasis on the preservation of harmony, on their need not to be singled out as different; and

The interpersonal style of human exchange with which they are most comfortable and responsive to.

Therefore, given this cultural framework, mental health services which are placed within the context of optimizing physical, psychological, and spiritual health will find greater acceptability with the

Hawaiian people than will initiatives which propose a specialized Western medical model approach.

Most essential, of course, to the success of this plan is the inclusion of cultural values. The approach to this care must challenge our creativity to provide alternative models of care. Interdisciplinary health care providers possessing diversity of skills, theory, and models must be brought together to provide appropriate services.

Nursing is one such group, and may be considered a leading profession in this endeavor as we do practice a model of care which has not been utilized or tapped by the health care industry to its fullest potential. The opportunity to prove our value once again is contained within this initiative, and we are ready to respond to the challenge.

Therefore, the Hawaii Nurses' Association supports the establishment of a system of comprehensive community-based care which incorporates culturally relevant mental health interventions as an integral part of its total health approach. This, we feel, will be a step in the right direction in the planning for the remediation of the multifaceted health problems which beset Native Hawaiians today.

Thank you for this opportunity to testify on this important issue. We wish to commend the committee and especially Chairman Inouye for the dedication you have shown to redressing the needs and inequities that still plague our Native peoples throughout this nation.

Thank you.

[Prepared statement of Ms. Clark appears in appendix.]

The CHAIRMAN. Thank you, Ms. Clark.

Ms. Clark, does the University of Hawaii School of Nursing provide any special courses on Native Hawaiian cultural values or healing practices?

Ms. CLARK. To my knowledge, at the moment, they do not. However, there has been a beginning interest.

I would like to mention that a small group of nurses from the Hawaii Nurses' Association of which two members are on staff at the School of Nursing has begun to meet and dialogue on the design and establishment of a nursing center for Hawaii. The center we envision would promote effective referral with collaboration of other health care providers and support services including traditional healers. So, we are looking at that. It is a beginning step, I think, toward the awareness of bringing this group into health service delivery at the School of Nursing.

The CHAIRMAN. I believe that there are approximately 7,000 members in the Hawaii Nurses' Association. Of that number, how many are of Native Hawaiian ancestry?

Ms. CLARK. That is a good question. I would not think a great percentage.

The CHAIRMAN. If you could provide us with that answer at a later time, I would appreciate it. We would just like to know that.

Ms. CLARK. We will, Senator.

The CHAIRMAN. I thank you very much, Ms. Clark.

Ms. CLARK. With pleasure.

The **Chairman**. Now, our final witness to wind up the whole hearing is Ms. Paulsen of the Hawaii Psychological Association.

STATEMENT OF SANDRA PAULSEN, REPRESENTATIVE AT LARGE, HAWAII PSYCHOLOGICAL ASSOCIATION, HONOLULU, HI

Dr. **Paulsen**. Mr. Chairman, Congressman Akaka, my name is Sandra Paulsen. As a member of the Executive Committee of the Hawaii Psychological Association, I would like to submit testimony in favor of the creation of a comprehensive community-based mental health initiative to address the mental and emotional health care needs of native Hawaiians.

Native Hawaiian individuals' mental and emotional health has been adversely affected as a result of cultural disintegration, as we have heard over and over today. Poverty, poor physical health, and loss of their land, among other stresses, lay the groundwork for emotional and mental problems. When the traditional means of healing and restoring self and group esteem are also jeopardized through cultural disintegration, worsened emotional and mental health follow.

I will dispense with the review of the by now all too familiar litany of tragic statistics.

It is urgent that we acknowledge the needs of the Native Hawaiians. A community-based solution is needed, and it should be one in which Native Hawaiians are integrally involved in all aspects of planning, administration, and implementation. If not enough Native Hawaiians have the training for such roles today, then such training should begin immediately. Again, we should utilize those who have been trained.

As psychologists, we have seen the failure of the traditional Western concepts of mental health for the Native Hawaiian. Based upon culturally inappropriate premises, traditional Western treatment offers the Native Hawaiian neither understanding nor a problem solving approach that is relevant. A systematic community-based approach to addressing the mental health needs of Native Hawaiians might well be built around indigenous problem solving techniques such as ho'oponopono and la'au lapa'au.

Members of the psychological profession have been deeply involved in both of the studies that we have heard so much about today. We respectfully bring our knowledge and skills in the area of behavioral science to help implement the goals of the Native Hawaiians in addressing their emotional and mental health needs.

We are proponents of an interdisciplinary approach that would employ paraprofessionals and have a community outreach component. As psychologists, we can serve as researchers, practitioners, and consultants in various stages of such a project. Because of our psychological approach, we characteristically conceive of both preventions and interventions as being both environmental and personal rather than a function of the psychopathology of individuals, and that is very important here.

We bring our expertise in assisting individuals and groups to make life style changes, to change health habits, and to maintain those changes for an improved quality of life for Native Hawaiians. We bring our knowledge of psychological assessment as well as the ability to determine the appropriateness of existing psychological assessment tools for a Native Hawaiian population. We can modify existing assessment techniques to make them more appropriate culturally and valid.

We support the establishment of special scholarships for training Hawaiian mental health professionals. Hawaiians are sorely underrepresented in psychology and in our professional society. We cannot effectively serve the Hawaiian population without trained mental health professionals of Hawaiian descent involved in the planning, administration, and delivery of services to the Native Hawaiian community.

Finally, we urge that appropriate research and evaluation activities be instituted for any newly established programs to help ensure that the outcomes are maximally beneficial to the Hawaiian community.

In conclusion, we strongly support the establishment of a comprehensive community-based mental health initiative to address the mental and emotional health care needs of the Native Hawaiians. We are grateful for the opportunity to speak with you on this deeply important subject and are appreciative of your leadership

The CHAIRMAN. I thank you very much, Dr. Paulsen.

How many psychologists are presently actively practicing in Hawaii or teaching or working?

Dr. PAULSEN. I think it is about between 250 and 300.

The CHAIRMAN. And what percentage of that number would be Native Hawaiian?

Dr. PAULSEN. It would be very, very small. We could have as few as 2 or 3, and I would be surprised if there were more than half a dozen.

The CHAIRMAN. So, it is between 1 or 3 percent?

Dr. PAULSEN. I guess that is right, yes.

The CHAIRMAN. Well, something has to be done about that I think.

Dr. PAULSEN. That is right.

The CHAIRMAN. It has been very helpful. As you know, the chief of staff of my office who keeps me always alert on matters of mental health is a psychologist himself, Dr. Patrick DeLeon, and my chief legal counsel is a very prominent attorney, but she is also a very prominent clinical psychologist. So, whether I like it or not, I have to be concerned with mental health.

Dr. PAULSEN. We think you show excellent judgment there.

The CHAIRMAN. So, with this, I thank all of you for sharing your thoughts and your mana'o with this committee.

[Whereupon, at 4 p.m., the committee adjourned, to reconvene at the call of the Chair.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

STATE OF HAWAII
OFFICE OF HAWAIIAN AFFAIRS
1600 KAPIOLANI BLVD., SUITE 1500
HONOLULU, HAWAII 96814
(808) 548-8960
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TESTIMONY OF MOSES K. KEALE, SR.

Chairman, Board of Trustees
Office of Hawaiian Affairs

The creation of a comprehensive community-based mental health initiative to address the mental and emotional health car needs of Native Hawaiians is long overdue.

Ano 'ai awakea kakou, Good afternoon Mr. Chairman and members of the committee. I am Moses K. Keale, Chairman of the Board of the Office of Hawaiian Affairs. This office supports the creation of a comprehensive community-based mental health initiative to address the mental and emotional health care needs of Native Hawaiians.

Native Hawaiians are a unique group of people whose culture patterns are reflected in traditions of personal, family and social behaviors. These behaviors contribute to the identity and security of Hawaiians throughout their lives. Although our people have many of the same pattern and variety of mental health problems as other indigenous peoples, we find that the cause of these mental health problems and the perception of these problems as well as the resolutions to the problems differ from those who are non-Hawaiian.

According to the research and service project called Hale Ola o Ho'opakolea in the Native Hawaiians Study Commission Report, Volume One "Pressures to successfully provide adequate income levels for families and stable jobs produce stresses among Native Hawaiians and generate role and value conflicts...a significant part of the problem is perhaps that there are no real alternatives that one can freely turn to aside from the dominant Western life-style..."

This comprehensive community-based mental health initiative will provide real alternatives for our Hawaiian people. These alternatives will alleviate the high proportions of stress, social problems, personality disorders, child abuse and neglect and suicide. Hawaiians rank high in these areas as compared to other ethnic groups. In 1987 Hawaiian children accounted for 24% of abuse and 21% of neglect cases. 23% of male suicides are Hawaiians. 10.5% of admissions to State mental health facilities are Hawaiians who have social problems with mates, family, other people, children, assaultive acts, anti-social behavior and personal problems as alcohol abuse, narcotics, impairment in job, school, & housework, anxiety phobia and depression.

Our office hosted a conference of Native Hawaiian healers in early February of this year. Our elders recognized the needs of our people linking mental health and physical health. Hoola lahui, to let the race live was the call. We need to be able to take the best of both worlds and allow our people to help themselves. This initiative will allow us to do so. We can then take our elders practice, revitalize the role of the 'ohana and move towards healing ourselves.

Mr. Chairman, members of the committee, mahalo a nui loa no ko 'oukou lokomaika'i, your attention is most appreciated. Thank you for affording us this time to state our concerns.

STATEMENT OF
JOHN C. LEWIN, M.D.
DIRECTOR OF HEALTH

BEFORE THE U.S. SENATE SELECT COMMITTEE
ON INDIAN AFFAIRS
HONOLULU, HAWAII
AUGUST 26, 1988

Regarding Mental Health Needs in the
Native Hawaiian Community

AS THE DIRECTOR OF HEALTH OF THE HAWAII STATE DEPARTMENT OF HEALTH, I WELCOME THIS OPPORTUNITY TO SUPPPORT A COMPREHENSIVE MENTAL HEALTH INITIATIVE FOR NATIVE HAWAIIANS.

THE E OLA MAU: NATIVE HAWAIIAN HEALTH NEEDS STUDY HAS DOCUMENTED THAT NATIVE HAWAIIANS HAVE HIGH PROPORTIONS OF ASSAULTIVE ACTS AND ANTISOCIAL BEHAVIOR, HIGHER PROPORTIONS OF ALCOHOL AND NARCOTICS USE, HIGHER RATES OF SUICIDE AMONG MALES, HIGHER RATES OF CHILD ABUSE AND NEGLECT, HIGHER RATES OF RESIDENCE IN CORRECTIONAL INSTITUTIONS AND HIGHER LEVELS OF STRESS. YET, NATIVE HAWAIIANS UNDER-UTILIZE MENTAL HEALTH SERVICES PROVIDED BY THE DEPARTMENT OF HEALTH; SUPPOSEDLY BECAUSE THE SERVICES FAIL TO ACCOMMODATE NATIVE HAWAIIAN CULTURAL VALUES AND PRACTICES.

THE DEPARTMENT OF HEALTH HAS BEGUN TO ADDRESS THIS PROBLEM WITH THE ESTABLISHMENT OF A NATIVE HAWAIIAN HEALTH TASK FORCE AND THE OFFICE OF HAWAIIAN HEALTH. BUT MORE NEEDS TO BE DONE THROUGH A CONCERTED EFFORT TO PROVIDE NATIVE HAWAIIANS ACCESS TO TRADITIONAL AND CULTURALLY CONSONANT HEALTH PRACTICES.

(Cont'd.)

THE DEPARTMENT OF HEALTH RECOGNIZES THE IMPORTANCE OF PROMOTING TRADITIONAL BELIEFS AND LIFE STYLES AS ALTERNATIVES TO WESTERN CONCEPTS OF MENTAL HEALTH. WE STRONGLY RECOMMEND THAT THE MENTAL HEALTH NEEDS OF NATIVE HAWAIIANS BE CONSIDERED IN THE COMMITTEE'S MENTAL HEALTH INITIATIVE WITH THE FOLLOWING IN MIND:

1. THAT MENTAL HEALTH SERVICES BE COMMUNITY-BASED AND BE COMMITTED TO HAWAIIAN CULTURE AND VALUES.

2. THAT MENTAL HEALTH PROGRAMS BE STAFFED WITH COMMUNITY WORKERS THAT ARE KNOWLEDGEABLE OF NATIVE HAWAIIAN CULTURE AND THE COMMUNITY IN WHICH THE NATIVE HAWAIIAN LIVES.

3. THAT NATIVE HAWAIIANS BE INVOLVED IN THE PLANNING, MANAGEMENT, MONITORING AND EVALUATION OF MENTAL HEALTH SERVICES.

ON BEHALF OF THE HAWAII STATE DEPARTMENT OF HEALTH, I, AS ITS DIRECTOR, WILL ASSIST THE COMMITTEE ON INDIAN AFFAIRS IN WHATEVER MANNER NEEDED TO MEET THE MENTAL HEALTH NEEDS OF OUR NATIVE HAWAIIANS.

TESTIMONY BEFORE THE SENATE SELECT COMMITTEE ON INDIAN AFFAIRS ON ISSUES OF NATIVE HAWAIIAN MENTAL HEALTH

AUGUST 26, 1988
Honolulu, Hawaii

BY

JERRROLD M. MICHAEL, Sc.D., Dr.P.H.
Dean and Professor of Public Health
University of Hawaii
Honolulu, Hawaii

INTRODUCTION

Senator Inouye I once more appreciate the opportunity to appear before you and to speak on behalf of this critically important subject.

As with most native peoples in the United States, the mental health needs of Native Hawaiians are at best only partially addressed and at worst, least understood in terms of comparative priority.

The overall mental health conditions of Native Hawaiians as well as that of the American Indians and Alaska Natives, are at least in part the direct and indirect result of the impact of Western values and lifestyles that make up our society's economic, political, educational and social environment--an environment that improperly overlayed, deprives the Native Hawaiians of the full benefits of physical, spiritual, social and psychological well-being. Although one can argue that there are benefits to be derived from the adoption of the dominant societal values by Native Hawaiians, there are probably more disadvantages and risks that result and they face the issue of maintaining positive mental health.

In contrast to a more Western concept of mental health, traditional Hawaiian beliefs and values, and in fact American Indian beliefs and values, that influence mental health view the individual in a unity of body, mind and spirit--a harmony which springs forth from an inseparable relationship with the sky, the land, the sea and "nature." Without acknowledgement, understanding, preservation and promotion of their natural culture, there is limited roots for socialization, a lesser sense of continuity with the past, a failing sense of ethnic identity, and a loss in personal, political and economic empowerment--leading ultimately to cultural dislocation, disintegration and--mental health problems.

PROBLEMS AND ISSUES

According to a 1985 mental health needs assessment conducted by the Hawaiian Health Research Consortium (HHRC) under the sponsorship of ALU LIKE, Inc., the general findings indicate that in comparison to the statewide population, Native Hawaiians have higher levels of:

1. social problems with family and children including assaultive acts and antisocial behavior
2. alcohol and drug abuse
3. school performance impairments
4. suicide among young adults and elderly males
5. child abuse and neglect (second only to Samoans)
6. confinement in correctional facilities
7. academic failures and poor school performance
8. stress based on stressors including poverty, low educational level, single family households and high dwelling density

Another significant problem noted by the report was the underutilization of mental health services by Native Hawaiians--a situation attributed to the cultural irrelevancy of the mental health services provided. In addition to the limited use of Hawaiian values and norms as treatment goals, the report also asserts that problems are often described without benefit and consideration of Hawaiian beliefs and practices and therefore behavior often diagnosed as deviant frequently lead to misdiagnosis and irrelevant treatment plans.

While a few examples of programs (e.g., Hale Ola and Opelu Project/Kaala Farms) that addressed mental health needs of Native Hawaiians in a culturally relevant way were acknowledged, the study also observed that public mental health workers have had virtually no training in Hawaiian culture; and in fact, there are very few Native Hawaiian mental health professionals in the system.

Although projects such as those noted above and Hawaiian methods/practices such as "ho'oponopono" and "lomi-lomi" should receive support and promotion, it seems more important to bring about institutional and systemic changes by encouraging major ideological and practice modifications within the public system.

SOME SUGGESTIONS

It is generally acknowledged that mental health needs and problems are the result of the complex impact of patterns of the society's social, economic and political order. It follows that if we are to make significant gains in addressing the mental health needs of Native Hawaiians, we should start with a sensitivity that recognizes, respects and promotes the culture of the Native Hawaiian. Corollary to the preservation of the Native Hawaiian culture, we must strive for changes that will ensure the meeting of common human needs--that is--adequate income, food, shelter, clothing and other basic necessities of life which are inextricably tied to maintaining good health much less mental health. To do these things will necessitate more bold thinking and action in creating change to upgrade the education of Native Hawaiian children, increase job opportunities for young adults and perpetuate the values, traditions and spiritual aspects of the Hawaiian culture. At least a part of that includes the University of Hawaii--and specifically our School of Public Health.

It is the belief of the colleagues in our school and me that suppression, devaluation and disdain for Native Hawaiian and other minority ways of life can only bring about a false sense of security and superiority to the majority. We need, as the popular singer Michael Jackson notes in his recent song, to start the change process with the "Man in the Mirror."

We in the School of Public Health endorse the recommendations from the Hawaiian Health Research Consortium's Study:

1. Renewal and perpetuation of Hawaiian values to assist in the promotion of pride, self-confidence and personal empowerment among Native Hawaiians,
2. development of mental health services which are community based--such as the Waianae Coast Community Mental Health Center,
3. development of educational training programs within the shcool system and within institutions of higher education to facilitate an increase in the number of Native Hawaiian mental health professionals,
4. development of continuing education programs for mental health workers to increase their cultural sensitivity and awareness, and the
5. development of programs to increase the availability of land and use of ocean resources.

Because the study also discovered gaps in the data base of Native Hawaiians vis-à-vis mental health needs, the following research recommendations also merit support:

1. The conduct of Epidemiological studies which focus on role expectations, performance and adjustments rather than on psychopathology studies,
2. the conduct of studies of natural support systems and networks,
3. the conduct of studies of mental health service delivery options and preferences,
4. the conduct of studies of Hawaiian language materials and their translation into health beliefs and practices,
5. the conduct of evaluation studies of the effectiveness of existing public and private educational programs, and
6. the conduct of studies of ethnocultural identity, measures of alternative lifestyles and their impact on health practices and outcomes.

Thank you, Senator for this opportunity to present the views of the Faculty of the School of Public Health.

NATIVE HAWAIIAN MENTAL HEALTH ISSUES

Testimony to the Senate Select Committee on Indian Affairs
By Christian L. Gulbrandsen, M.D.
Acting Dean of the John A. Burns School of Medicine
University of Hawaii at Manoa
August 26, 1988

Good afternoon Senator Inouye, members and staff of the Senate Select Committee on Indian Affairs. I appreciate this opportunity to present testimony on Native Hawaiian Mental Health Issues.

Two major reports, one published in 1983 (The Native Hawaii Educational Assessment Project) and the other in 1985 by the Kamehameha Schools and Alu Like, Inc., (E Ola Mau: The Native Hawaiian Health Needs Study) have documented the severe lack of mental health services to Native Hawaiians in our state. Speakers at today's hearing will echo the tragic findings of these reports which are now three to five years old.

What has happened, and is presently happening to Native Hawaiian mental health since the 1983 and 1985 publications mentioned above is a matter of grave concern. Since 1983, the mental health needs of Native Hawaiians have not decreased. The 1985 Alu Like Report indicated that Native Hawaiians ranked second among ethnic groups in the State of Hawaii for substance abuse. This fact is illustrated at Queen's Medical Center, the major psychiatric emergency facility. Our University Psychiatric Emergency Service at Queen's reports a frequency of 1-2 Native Hawaiian patients per week being treated for Amphetamine Psychosis over the past two months in comparison to three Non-Hawaiian patients treated for the same problem during the same two-month period.

Amphetamine Psychosis is a mental disorder caused by the use of amphetamines, called "crystals and ice" on the streets, in which a person will experience hallucinations, delusions and be out of touch with reality. Oftentimes they will be at high risk for suicidal and/or homicidal actions. If this trend continues, there could be an incidence of Amphetamine Psychosis as high as 25% for Native Hawaiians, as compared to 4.6% for Non-Hawaiians. Almost all the Native Hawaiian patients treated for Amphetamine Psychosis were residents of the Waianae Coast, an area on this island that has a predominantly Native Hawaiian population.

Another significant facet of mental health need is the development of the future leaders, role models and healers for Hawaiians and Non-Hawaiians among our Native Hawaiian medical students who themselves will become involved at the very core of planning, development, implementation, and research. The John A. Burns School of Medicine has a successful record of Native Hawaiian students entering and graduating from the University of Hawaii (Native Hawaiians make up about 7% of our medical students, and from that number 90-95% graduate). In spite of this success, Native Hawaiian students are overrepresented in areas of academic difficulty and require remedial work, tutoring, counseling and mentorships with the help of Native Hawaiian Medical Professors such as Dr. Kekuni Blaisdell.

At first glance, one may make the erroneous assumption that perhaps Native Hawaiian students are not as intelligent as our non-Hawaiian students. And thus, the majority of remedial and tutorial programs are geared toward increased immersion in memorizing and adapting to the predominant western learning model.

However, Native Hawaiian faculty such as Nanette Judd, Coordinator of the Imi Ho'ola Program (the medical school's premedical, affirmative action program through which a majority of our Native Hawaiian students enter medical school) and Dr. Naleen Andrade, Assistant Professor and Director of Medical Student Education in our Department of Psychiatry, have recently brought to my attention another hypothesis for the academic problems of our Native Hawaiian students. These faculty assert that it is not the student who has failed the educational system, but rather the educational system that has failed the student.

More specifically, the predominant learning model that currently exists in our educational system is dialectic--that understanding and learning occurs through a dialog of questioning and discussing abstract, intellectual theories and ideas. The Native Hawaiian learning model which Dr. Andrade describes as Na'au 'ike pono is that understanding and learning occur by an empathic process in which one observes, listens, and experiences, in reality or vicariously, before dialog occurs. Thus, questions are put forth only after one has shown the patience and discipline to be an empathic explorer of knowledge, rather than an objective observer questioning a phenomenon from which you have purposefully removed yourself.

Ultimately, the goal is to acquire the understanding necessary to reach and maintain pono, a state in which a balance occurs between the actual and theoretical, the concrete and abstract, the physical and spiritual, cognition and emotion. This balance allows for responsible, creative problem-solving which is the same goal of our present educational system. In other words, although their process of learning is different, both the Native Hawaiian and the predominant western educational models strive for and, when successful, achieve the same ultimate goal of producing the creative problem-solver.

From a mental health standpoint, it appears that our educational system perpetuates an attitude that the Native Hawaiian way of learning is inferior to the western way. This attitude is not only false, but suggests a kind of institutional racism. It takes but a little effort to imagine the loss of self-esteem and self-confidence a Native Hawaiian student, raised with the Native Hawaiian way of learning, must endure and overcome when a demand is made for them to reject their own way of learning. Could these students learn more effectively if we encouraged and guided them to continue their own cultural way of learning? As a result of Nanette Judd's and Dr. Naleen Andrade's hypothesis, we are beginning to develop programs that would address the need to encourage and guide our Native Hawaiian and Pacific Islander students to utilize their own cultural learning models to master the medical school curriculum. These two faculty members as well as other Hawaiian and Non-Hawaiian faculty are involved in this endeavor.

A major limiting factor in our medical school initatives to address Native Hawaiian mental health needs is funding. Programs require not only a committment of time and effort, but a committment of financial resources. Legislation that could provide the necessary funding would be invaluable to address the Native Hawaiian mental health needs.

I would like to close by noting that since the 1983 and 1985 Native Hawaiian Health Reports were published, a small but significant change for the betterment of Native Hawaiian Mental Health was accomplished by the John A. Burns School of Medicine. We graduated the first Native Hawaiian woman psychiatrist from our residency program and currently have Drs. Noelle Yuen, Linda Nahulu and Kenneth Luke, all Native Hawaiians and graduates of our medical school, as resident physicians in Psychiatry. Continued federal, state, and community support for the training of these and other Native Hawaiian healers, are crucial for promoting the health, both mental and physical, of all Hawaiians.

Your presence here today demonstrates, in a very real way, your sensitivity and committment to ensure what seem to be impossible today will someday become inevitable. Thank you.

TESTIMONY BEFORE THE UNITED STATES' SENATE SELECT COMMITTEE ON INDIAN AFFAIRS REGARDING A COMPREHENSIVE COMMUNITY-BASED MENTAL INITIATIVE TO ADDRESS THE MENTAL AND EMOTIONAL HEALTH CARE NEEDS OF NATIVE HAWAIIANS

August 26, 1988
Keoni Auditorium, East-West Center
University of Hawai'i-Manoa

Anthony J. Marsella
Vice President
Academic Affairs
University of Hawai'i

Aloha and welcome to Hawai'i. My name is Ku'umeaaloha Gomes and I am a full time student at the University of Hawai'i at Manoa. On behalf of Dr. Anthony J. Marsella, Vice President of Academic Affairs at the University of Hawai'i-Manoa, who is unable to be here today, I wish to testify in support of the efforts of the Select Committee on Indian Affairs to establish a comprehensive community-based mental health initiative to address the mental and emotional health needs of Native Hawaiians.

In 1985 I was involved in the E Ola Mau: Native Hawaiian Health Needs Study and I am a co-author of the Mental Health Task Force report. In comparison to statewide population estimates, our study found Native Hawaiians had:

1. Higher proportions of social problems, including higher proportions of assaultive acts and antisocial behavior;
2. Higher proportions of alcohol and narcotics use;
3. Higher proprtions of school performance impairment;
4. Higher rates of suicide among young adult and elderly males;
5. Higher rates of child abuse and neglect (second only to Samoan populations.)
6. Higher rates of residence in correctional institutions;
7. Higher rates of acedemic failure and poor school performance;

   and

8. Higher levels of stress as indexed by leading stress markers including poverty, educational level, single family household dwelling density, and so forth.

The findings of the E Ola Mau: Mental Health Task Force also revealed that the existing mental health services and facilities are under-utilized by Native Hawaiians because in the present structure and delivery, these services fail to accomodate to the needs of the Native Hawaiian by and ignoring their culture values and life styles. Hawaiian values and norms are not considered in treatment goals. The beliefs of the Native Hawaiian are important in the description of their problems; their cultural beliefs and practices regarding health. However, what we have found was a lack of Hawaiian cultural knowledge in those participating in the current mental health structure of service delivery; thus, critical cultural sensitivities were absent.

Although many health professionals are sincere in their efforts to "help" the Native Hawaiian, there is virtually no training in Hawaiian culture. This type of training is not given a high priority, despite the statistics showing that the Native Hawaiian is in need of assistance and could benefit from mental health services.

In order that significant changes are made to improve the status of the Native Hawaiian, we must look to the source of discontent. It is true, and the statistics tell no lies about the high rate of unemployment amoungst the Native Hawaiians. It is true, and we cannot ignore the high rate of Native Hawaiians who are in residence in correctional facilities. It is true, despite the small strides in this area, that there are high incidences of academic failure and poor school performance amongst Hawaiian school age children. It is true, and we cannot bury the fact that there are high rates of child abuse and neglect amongst the Native Hawaiians. It is true, and we can continue to blame these "victims", that there are higher proportions of social problems in the Native Hawaiian community in comparison to statewide population estimates.

All of the findings in the E Ola mau: Native Hawaiian Health Needs Task Forces : The Historical- Cultural Task Force, the Dental Task Force, the Nutrition Task Force, the Medical Task Force and the Mental Health Task Force, paint a grim, yet true picture of the majority of the Native Hawaiians. However, in the last five years, we have begun to see positive changes in the attitudes of the young and old in the Native Hawaiian community. And perhaps it is not that their attitud~~es are~~ changing, but rather that the system in which we live,is finally accepting the values and life style of the Native Hawaiian as being an important contribution to society as a whole. It is with the necessary change of attitude within this American system, that the status of the first people of this land will be elevated. It is with the continued efforts of Committees like this and with individuals in Congress like you, Senator Inouye, that the health status of the Native Hawaiians will improve at a faster rate. It is with the continued distribution of monies for program planning and implementation that the native Hawaiian will once again realize their dream of being self-sufficient and self-determining.

We know and we cannot ignore the history of the native Hawaiians and the fact that it is their lands that were taken away and their government that was "overthrown." We cannot discount the Native Hawaiian spirituality and their psychological and emotional attachment to their precious 'aina. These people were once a thriving nation of skilled artisans in navigation, irrigation, farming, canoe and house building. Their lives focused on the perpetuation of their race, and children and elders played a significant role in their everyday lives. We have asked ourselves the question "What happened to make such gross changes in a once healthy and thriving nation of proud people ?" We know the answer and that is why we are here today to support the efforts being made to provide assistance and restore to the Native Hawaiians what they so rightfully deserve.

The Mental Health Task Force of the E Ola Mau:Native Hawaiian Health Needs Study made its recommendations and these are included in the report that you have ready access to and have probably read many times in the past year, Senator Inouye. Allow me to reiterate in summary those recommendations:

1. The renewal and perpetuation of Hawaiian values to assist in the promotion of pride, self-confidence, and power among Native Hawaiians.
2. The developement of autonomous mental health services which are community-based and controlled by Native Hawaiians and which are committed to Hawaiian culture, history, and language.
3. The developement of educational training programs within the school system and within higher education institutions to facilitate an increase in the number of Native Hawaiian mental health professionals.
4. The implementation of cultural sensitivity and awareness programs under continuing education program auspices for mental health service providers. Certification of professional competence for dealing with Native Hawaiians should be required.
5. The developement of political, economic, educational, and social programs to encourage empowerment.

6. The developement of more programs to increase the availability of land to Native Hawaiians since it is from a relationship with the 'aina that all mental and spiritual health flows.

The research recommendations proposed by the task force were shaped by the mental health needs which the study revealed and by the following guidlines for conducting relevent research: (1) mental health researchers should be cognizant of and sensitive to Native Hawaiian culture, history, and language (2) research should be directed toward building community competence; and (3) research should involve Native Hawaiian people in the planning, conduct, and interpretation of investigations.

The following research recommendations were proposed:

1. Conduct social epidemiological studies which focus on role expectations, performances, and adjustments rather than psychiatric epidemiological studies, which emphasize rates of several mental disorders.
2. Conduct studies of natural support systems and networks.
3. Conduct studies of mental health service delivery options and preferences.
4. Conduct translation studies of Hawaiian language materials which involve health beliefs and practices.
5. Conduct evaluation studies of the effectiveness of existing educational programs including both public and private schools and institutions.
6. Conduct studies ~~of~~ ethnocultural identity and develop measures of alternative life styles and their impact on health practices and outcomes.

The Needs of the Native Hawaiian people continue to require the focus of concerned individuals like yourself and others in this room. The Native Hawaiians have experienced much pain, degredation, and humiliation for generations, they have begun to take their future into their own hands, and are begining to make significant and positive impacts on their community. The University of Hawai'i is dedicated to improving the status of the Native Hawaiians. We are focused on a committment to elevating the status of these proud people whose lifestyle is so important to our understanding of the history of Hawai'i. We look forward to participating in efforts with you that will involve the creation of a comprehensive community-based mental health initiative.

Mahalo for this opportunity to testify on behalf of your efforts.

ALU LIKE
WORKING TOGETHER

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August 26, 1988

TESTIMONY IN SUPPORT OF THE CREATION OF COMPREHENSIVE COMMUNITY-BASED MENTAL HEALTH INITIATIVE TO ADDRESS THE MENTAL AND EMOTIONAL HEALTH CARE NEEDS OF NATIVE HAWAIIANS

Aloha Mr. Chairman, members and staff of the Senate Select Committee on Indian Affairs. My name is Masaru Oshiro, Chief Executive Officer of ALU LIKE, a private non-profit community based organization serving the Native Hawaiian people statewide.

For the past thirteen years, ALU LIKE has implemented a full range of human services programs through partnerships with Federal, State and private corporate entities.

In this connection, the issue of adequate mental and emotional health care for Native Hawaiians is central to the pursuit of ALU LIKE's goal of achieving social and economic excellence for the people it serves. Attached to this testimony are relevant citations from various mental health needs studies but ~~suffice~~ suffice to quote one such findings which states "that many Hawaiians are faced with the dilemma of trying to adjust to demands of contemporary Island society, to meet minimum standards of living, while attempting to preserve long held traditional patterns of behavior and values which define the essence and distinctiveness of being Hawaiian."

Despite the well-documented needs for mental health services, current surveys clearly show that services are not reaching many Native Hawaiians in the state especially those in isolated communities.

Based on these findings, ALU LIKE strongly believes that leadership in responding to the mental health needs of Native Hawaiians must come from the Hawaiian community. This leadership in working cooperatively with existing public mental health agencies and institutions will best meet the needs of Native Hawaiians without duplicating limited public resources.

A comprehensive community-based mental health policy initiative must incorporate the following principles:

1. That community-based care will mean "comprehensive, quality care, delivered as close to the client's home community as possible in ways which are sensitive to the client's culture and beliefs." (statement of Association of American Indian Physicians, 1988)
2. That the community-based approach will seek out Native Hawaiian community involvement and participation in its development and seek to harness Native Hawaiian community strengths.
3. That lasting impact can only be achieved through a systematic, comprehensive approach resulting in a well integrated system of components for primary health care and service delivery. These components include, health planning and monitoring, traditional Native Hawaiian health professionals, outreach, primary health care and health promotion.

4. That appropriate health care is the result of health services provided through a system that is accessible, acceptable, available, appropriate and accountable to the people it serves.

ALU LIKE stands ready to participate in the development of mental health policy initiatives which are culturally relevant and acceptable to the Native Hawaiians. Through ALU LIKE's statewide community-based network, together with other Hawaiian organizations, we are prepared to mobilize a system of communication to seek inputs from individuals who have integrated traditional healing practices in their service to people in the Hawaiian community. Our long established data collection and research capabilities can provide valuable, historical and current information which are critical to any comprehensive, community-based mental health policy analysis.

ALU LIKE's continuing relationship with health related Native Hawaiian organizations such as E Ola Mau, Inc. and Hale Ola o Ho'opakolea, Inc. and our on-going collaborative work with other Hawaiian organizations places us in a strategic position to assist State and Federal agencies address this important issues.

We look forward to this cooperative effort with the Select Committee on Indian Affairs. Thank you for the opportunity to testify.

Masaru Oshiro

Masaru Oshiro, President/CEO

Attachment:

Citations from the following reports:

-The Mental Health of Native Hawaiians -November 1981

-E Ola Mau: The Native Hawaiian Health Needs Study Compendium of Executive Summaries -December 1985

-Study of Mental Health Services for Native Hawaiians in a Community-Based Program -October 1987

1. Of all Hawaiians in the State 9% earn less than $5000 annually as compared to three other ethnic groups at 4%, 2% and 6%.

2. Of all Hawaiians in the State 37% earn between $5000 and $9999 annually as compared to three other ethnic groups at 14%, 10% and 23%.

3. On a statewide basis, 59% of Hawaiians aged 25 and over have less than a high school education.

4. 22% of all Hawaiians live in households consisting of 7 or more individuals.

5. Of all Hawaiian households, 3% are female-headed raising children and seeking suitable income in a market that provides meager resources for women.

6. Native Hawaiians rank second in child abuse and neglect among five ethnic groups in Hawaii.

7. Native Hawaiians are overrepresented among alcohol and drug abusers.

8. Native Hawaiians have higher rates of suicide among young adult and elderly males than the statewide population.

9. Native Hawaiians engage in behaviors which are high risks for developing diabetes, heart disease, hypertension, cancer (fat/salt/alcohol consumption, smoking, being overweight, lacking exercise).

10. Native Hawaiians experience hypertension and heart disease at earlier ages than other groups and have higher rates in the young adult population.

11. Native Hawaiians enter medical treatment at late stages of disease, when self care and traditional practices have not brought sufficient relief. And in the case of some groups of cancer, Hawaiians have poorer rates of survival compared with other groups diagnosed at the same stage of disease.

12. Native Hawaiian infant mortality, congenital abnormalities, and underweight infant rates are higher than other groups. Native Hawaiian pregnant women rank highest in late or no prenatal care, and in smoking and alcohol comsumption during pregnancy.

TESTIMONY

For the Senate Select Committee on Indian Affairs

The Honorable Daniel K. Inouye, Chair

Issues in Native Hawaiian Mental Health

Presented By:

Ormond W. Hammond, Ph.D.
Kamehameha Schools/Bishop Estate

August 26, 1988

Good afternoon Senator Inouye and members of the committee.

My name is Ormond Hammond. I am speaking today on behalf of Mr. Myron Thompson and the Kamehameha Schools/Bishop Estate. As a private educational trust, our mission is to assist Native Hawaiians in their efforts to achieve their highest potential as effective participants in contemporary society. The issue of mental health is of deep concern to us as it cuts across not only education, but all aspects of participation in today's world.

As Mr. Thompson has eloquently stated in past testimony before this committee, we are most grateful for the attention and support provided by you and the committee, Senator Inouye. Although we often must cite the severe and long-standing social, educational, and health problems of the Hawaiian people, much progress has been made and is being made toward addressing them.

In particular, the recent passage of legislation (P.L. 100-297) providing needed educational programs for Native Hawaiians is a real step forward. A high priority among these are the Family-Based Education Centers. The Kamehameha Schools/ Bishop Estate has developed and tested such centers, and we have come to share the view of many experts in the field that the earliest periods of learning provide the keys to later school achievement.

There is no need to reiterate the long list of social and educational needs of Native Hawaiians which recent studies have documented. Suffice it to say that mental health has been found to be a major need area.

The Native Hawaiian Educational Assessment Project suggested that many of the modern problems afflicting Native Hawaiians can be traced to the stresses caused by two centuries of rapid culture loss. The Native Hawaiian Health Needs Study Mental Health Task Force found that many modern Hawaiians do not seek help from existing mental health services which are not attuned to culturally based beliefs and concepts. Instead, many prefer the more personal involvement of traditional healers.

There are some traditional Hawaiian concepts which may prove extremely valuable to modern mental health care and should be carefully assessed and made available. One of these is *ho'oponopono*. Mr. Thompson has commented on this issue in previous testimony:

> "I believe that an intensive professional inquiry into the principles of 'ho'oponopono' - 'to set to right' will elicit basic similarities with present day psychotherapeutic theory. As such, the extensive present-day 'underground practice' of 'ho'oponopono' can be legitimized, described, and put into teachable units for use by our mental health practitioners. In addition, our present day elders, who are providing 'ho'oponopono' in its present form, can be assisted to sharpen their skills based on clear, documented theory."

This *applied research into Native Hawaiian mental health concepts*, then, is the first recommendation for use of the new funding. It is important that the new knowledge be put in practical, usable form. And a place where it should be immediately usable is in the Family-Based Education Centers to which I referred earlier. Techniques which can reduce stress and conflict within families are most needed in this all-important early crucible of learning for the young child.

The second recommendation is that *training, for Native Hawaiian as well as non-Native Hawaiian professionals and non-professionals, be made an integral part of the process.* The thorough investigation of Native Hawaiian mental health concepts, for example, must involve Hawaiian researchers, even, perhaps, Hawaiian models of research. Benefitting will be Native Hawaiian practitioners who wish to remain outside the professional health care system, Native Hawaiians who wish to become professional health care providers, and non-Native Hawaiians who seeking effective therapeutic systems.

Mr. Chairman, along with the many negative statistics that we have reported to your committee, there have been some very positive indicators. The Hawaiian culture, despite severe losses, remains a source of pride and inspiration for many modern Hawaiians. In addition, it has provided the nation and world with some cherished concepts. What we now know about beliefs such as *lokahi* - harmony among body, mind, and spirit - suggests that the Hawaiian culture was far ahead of western civilization in recognizing the holistic nature of what we call health. Modern medicine seems to be headed in this direction. We hope that this new initiative will allow Hawaiian culture to take its rightful place at the vanguard of this movement.

Thank you, again, Senator Inouye. It has been a privilege to present this testimony on behalf of Mr. Thompson, who is currently accompanying a group of Kamehameha students representing the State of Hawai'i at the 5th International Festival of Pacific Arts in Australia. He sends his fondest aloha.

Please let me know if I or anyone at Kamehameha Schools can assist in the further development of this important initiative.

Native Hawaiian Mental Health Issues

Testimony to the Senate Select Committee on Indian Affairs

By Naleen N. Andrade, M.D.

Vice-President of E Ola Mau

August 26, 1988

Good afternoon Senator Inouye, members, and staff of the Senate Select Committee on Indian Affairs. I am grateful to speak on behalf of E Ola Mau, a non-profit, state-wide organization of Native Hawaiian Health Professionals whose mission is to achieve lokahi --the healthful harmony of the Self with others, nature and the cosmos. And by the Self, we mean the Body, Mind and Spirit.

Today, a number of speakers will quote the The E Ola Mau Report published by Alu Like in 1985, which outlines the physical, mental and spiritual devastion of our Native Hawaiian people. This Report, which came about largely because of your efforts, establishes that when compared to statewide population estimates, Native Hawaiians have higher proportions of mental health problems such as substance abuse, family violence, suicide, child abuse, and so forth.

Another significant finding of the E Ola Mau Report is that Native Hawaiians under-utilize our existing mental health services. Too often our native people enter mental health services because they are court-ordered or have reached a level of such severity that they are suicidal, homicidal or psychotic.

In my own work as a professor in the Department of Psychiatry at the John A. Burns School of Medicine, I have treated far too many Native Hawaiians suffering from depression, suicidal and homicidal thoughts, and psychosis. Dr. Christian Gilbransen, Dean of our medical school will elaborate more on some of the alarming statistics we are finding among patients we treat on the University Emergency Psychiatry Service at Queen's Medical Center which I help to supervise.

What can be done to address these serious, life threatening mental and emotional problems? E Ola Mau would like to strongly recommend the following: (1) Although the mental health needs of Native Hawaiians are critical, legislation should not set mental health iniatives above the development of a comprehensive health care plan. A major purpose and goal of E Ola Mau is developing and implementing a Comprehensive Statewide Native Hawaiian Health Care Master Plan. Senate Act 136, The Native Hawaiian Health Act, introduced to Congress by Senator Inouye and this committee, is crucial to the realization of such a comprehensive treatment approach. S.136 was developed out of the overall, recommendations of the E Ola Mau Report and it is consistent with the holistic belief and practice of lokahi.

E Ola Mau believes that introducing separate legislation on mental health issues, before S. 136 is passed and funded by Congress, would create a fragmentation of health care which would be detrimental to our people.

Lokahi in practice, means that in dealing with our imperfect world, we must seek not to set one thing or person against another in a competition because the implicit message is that something must be conquered. In Lokahi, the way of the universe is not to conquer, but to achieve balance and harmony.

Thus, E Ola Mau would recommend and urge you to get S.136 passed and funded by Congress, and serve as the major means through which mental health services, training, education and research be initiated.

(2) Mental Health Research should be Applied Research involving direct clinical services. For too long, our native people have been studied and written about without receiving any significant improvement of their health conditions. We have heard angry, bitter and frustrated Native Hawaiians in communities throughout this state comment upon the observation that, "Oh those clever University professors, they come to us and ask all their questions for their research. They say, 'It's going to help us get better, more healthy?' Then they write their papers and books, and have their conferences about us. Next thing we see on the TV they're experts on us Hawaiians and our problems. Funny thing, they get the promotion in the university and they get famous, but we still the same, we get nothing...How is this different from the missionaries who said they wanted to save us and then took away the things that gave us life?" And, there is a measure of truth in these statements because for all the research presented in the publications on Native Hawaiian health, the subjects of these research studies have yet to receive relief.

(3) Native Hawaiians must be the leaders and at the very core of planning and implementing programs for health services, training, education, and research. There is a false belief among some at our University that Native Hawaiians are incapable of leading health services, training, education and research. The perpetuation and institutionalization of this kind of prejudice and injustice is perhaps the largest obstacle we in E Ola Mau must deal with.

Experts and leading authorities --most of whom are not Native Hawaiian-- have told us that we must have a track record, we must not fail, we must succeed, therefore, we Native Hawaiians must trust those with more experience to do it for us. Yet, when look at history we find that for all the time when Native Hawaiians have not been leaders of health services, training, education, and research, there has been no improvement of health and in fact, there has been a steady trend of worsening health statistic. I am not saying that Native Hawaiians are better. I am only saying that it is time for Native Hawaiians themselves to try and heal themselves. We will make mistakes, but they will be our mistakes, and from these mistakes will come our learning.

(4) The myth that the so called "Hawaiian Problem" will never be solved no matter how much money is poured into it must be dispelled. When compared to the native people of mainland America, Native Hawaiians have a very excellent chance to succeed. For example, Native Hawaiians do not have the vast geographical dispersion. Within 25 minutes people can be brought together from the farthest distances in our state; and we share a common language and culture.

E Ola Mau believes that the implementation of the Native Hawaiian Health Care Master Plan of S.136, which we are currently working on, will have a significant impact upon Native Hawaiian health in our state.

In Psychiatry, and in the process of Lokahi, it is considered healthy to express one's emotions in a manner that perpetuates understanding and healing. E Ola Mau recognizes the powerful and sometimes painful emotions involved in our struggle. But as Native Hawaiian healers we will stand firm, onipa'a, in our mission to go beyond our pain and suffering and become effectve citizens and leaders in our Homeland.

TESTIMONY FOR SENATE SELECT COMMITTEE
SENATE BILL 136
A BILL TO IMPROVE THE HEALTH STATUS OF NATIVE HAWAIIANS

AUGUST 26, 1988

BY M. KU'ULEI RICHARD, M.P.H.
DIRECTOR, HALE OLA HO'OPAKOLEA, INC.
--A CULTURAL HEALING AND RESOURCE CENTER--

Aloha Mr. Chairman and members of the Select Committee on Indian Affairs. My name is M. Ku'ulei Richard and I am the Director of Hale Ola Ho'opakolea, Inc. a private non-profit, community based organization whose mission is to promote wholistic healing through Hawaiian cultural practices, using the positive life styles, spiritual values, communication skills and beliefs of Native Hawaiians.

Hale Ola Ho'opakolea, Inc., is a relatively new cultural service center serving Native Hawaiians and other people in need whose cultural patterns are vital to their well-being. Located in Nanakuli, one of four communities on the Wai'anae Coast of O'ahu, Hale Ola Ho'opakolea uses local Hawaiian counseling and resource staff.

Hale Ola Ho'opakolea was created in 1981 in response to community demand for more culturally sensitive approaches to problems of a personal or emotional nature faced by Native Hawaiians.

Mental health services, in particular, had not been widely used and in fact were considered by residents to be inappropriate and ineffective. Residents and representative at various hearings and community meetings had repeatedly emphasized the lack of cultural relevance the present services provided.

Hale Ola Ho'opakolea was a response to these expressions of concerns from the community, and proposed to expand and integrate mental health care resources targeted for Native Hawaiians on the Wai'anae Coast as a major underserved population in the State.

Since its inception, Hale Ola Ho'opakolea has provided a culturally sensitive service delivery model by which others have adopted in part. The model uses 1) para-professionals, service providers who understand, communicate, and help those in need because of similar cultural beliefs and values, 2) outreach, a way of meeting people in need where they feel most comfortable, and 3) cultural practices of Kupuna and Kahuna Lapa'au,, informal lay and Traditional healers whose function is to help our counselors create a bridge for Native Hawaiian clients who underutilize the existing Western Health care systems.

Delivering culturally sensitive mental health services enables Hale Ola Ho'opakolea, Inc. to help to make a difference in the health status of Native Hawaiians.

It is with great enthusiasm that we support Senate Bill 136, for it represents a priceless opportunity for our Native Hawaiian people.

Mahalo nui loa - Thank you for the opportunity to present Testimony on behalf of Hale Ola Ho'opakolea, Inc.

Hawaii Nurses' Association

LORAINE CARLSON, R.N.
President

GERI MARULLO, R.N.
Executive Director

PHYLLIS EIDE, R.N.
Associate Director

BOBBI LYMAN
Administrative Secretary

MAUREEN McCARTHY
Fiscal Coordinator

LORI NAKATSUKA
Membership Coordinator

SERVICES

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Collective Bargaining
521-8361

TESTIMONY

OF THE

HAWAII NURSES' ASSOCIATION

ON

Developing a Comprehensive Community-Based Mental Health Initiative for Native Hawaiians

BEFORE THE

SENATE SELECT COMMITTEE

ON INDIAN AFFAIRS

Presented by

Fern Clark, RN

ON

AUGUST 26, 1988

EAST-WEST CENTER
UNIVERSITY OF HAWAII

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An affiliate of the
American Nurses' Association

Chairman Inouye and members of the Select Committee on Indian Affairs, my name is Fern Clark, and I am a Public Health nurse of Hawaiian ancestry working with the Hawaii State Department of Health.

I am testifying today on behalf of the Hawaii Nurses' Association at the request of Geri Marullo, Executive Director of HNA. The Hawaii Nurses' Association is the professional organization speaking for Hawaii's 7,000 registered nurses who provide health care services in hospitals, nursing homes, and in the community.

The profession of nursing considers as one of its primary responsibilities efforts to shape the development of quality and cost-efficient health delivery systems. We also acknowledge the attention which must be given to accessing these health services to the people who need them most.

The concept of community based health systems, because of the coordination and collaboration which it supports, as well as the accessibility it affords through outreach, is not only cost-efficient but also addresses three vital requirements which the Hawaii Nurses' Association has assessed as essential in rendering health services to populations who need them most.

First, we need to coordinate existing resources, services, and programs from the broad periphery (both public and private sectors), into meaningful focus for the recipient.

Second, we need to reach out to clients with approaches which are sensitive and responsive to their culture and circumstance, and

Third, we need to perservere in our efforts to access these services to clients on a continuum.

In Hawaii, the population presently most needing of this kind of focus is the Native Hawaiian. Their present health plight reveals them to be highly vulnerable to disease - both physical and mental as evidenced by the fact that they have:

- The highest state mortality rates in every major disease category; and in the case of diabetes and certain cancers, the highest morbidity and mortality rates in the nation.
- The highest rates of alcohol and narcotics use.
- The highest rates of social problems with family, people, and children - including higher proportions of assaultive acts and antisocial behavior.
- The highest rates of school performance impairment.
- The highest rates of suicide among young males (ages 15-24 years).
- High rates of child abuse and neglect, second only to the Samoan population.

What's more, the statistics reflect that this population generally shows higher rates of receiving either no medical care or suboptimal care, which is a major reason for the continuing health decline they experience today.

The scope of these findings gives us the first important cue that we in health services cannot separate psychological from somatic functioning, particularly as focus is given to Native Hawaiian clients who culturally view the harmony of body, mind and spirit as their measure of wellness.

Supportive documentation of the importance of this cultural consideration is found in the 1985 E Ola Mau study on Native Hawaiian Needs, which noted three important components of Hawaiian culture which have a direct implication for how health services should be provided:

- Spiritual Values, which emphasize the spiritual unity of the individual within the environment and the spiritual significance of such events as illness.

- Minimization of Risk. The Hawaiian culture emphasizes the preservation of harmony. Individuals tend to minimize the importance of events that set them apart from others or which threaten to disrupt the group. They do not like to be singled out as different. This value may lead to a coping strategy that tries to normalize symptoms of illness ("ain't no big thing") and delay seeking health care.
- Interpersonal Style, centrally focused on affiliation, peer bonding, and reliance on personal networks to help cope with problems. Native Hawaiians are uncomfortable with impersonal, bureaucratically organized service and with reliance on expert authorities.

Given this cultural context, mental health services which are placed within the context of optimizing physical, psychological and spiritual health will find greater acceptability with the Hawaiian people than will initiatives which propose a specialized Western-medical-model approach.

Most essential to the success of this plan, of course, is the inclusion of cultural values. The approach to this care must challenge our creativity to provide alternate models of care. Interdisciplinary health care providers possessing diversity of skills, theory and models must be brought together to provide appropriate services.

Nursing is one such group and may be considered a leading profession in this endeavor as we practice a model of care which in the past has not been utilized or tapped by the health care industry to its fullest potential. The opportunity to prove our value once again is contained within this initiative, and we are ready to respond to the challenge.

The Hawaii Nurses' Association supports the establishment of a system of comprehensive, community-based care, which incorporates culturally relevant mental health interventions as an integral part of its total health approach. This, we feel, will be a step in the right direction in the planning for the remediation of the multifaceted health problems which beset Native Hawaiians today.

Thank you for the opportunity to testify on this important issue. We wish to commend the Committee and especially Chairperson Inouye for the dedication you have shown to redressing the needs and inequities that still plague our native peoples throughout the nation.

HAWAII PSYCHOLOGICAL ASSOCIATION
P.O. BOX 10456 HONOLULU, HAWAII 96816

August 23, 1988

Honorable Daniel K. Inouye
Hawaii Chairman
Select Committee on Indian Affairs
United States Senate

Dear Senator Inouye:

Mr. Chairman, Members of the Committee, my name is Dr. Richard Kappenberg, and as current President of the Hawaii Psychological Association, I would like to submit testimony in favor of the creation of a comprehensive community-based mental health initiative to address the mental and emotional health care needs of Native Hawaiians.

Introduction

By way of introduction, the Hawaii Psychological Association represents psychologists in Hawaii. There are currently some 200 members, including practicing psychologists, University Professors, as well as graduate and undergraduate students. Our organization is committed to promoting the public interest and our professional competence. We highly value the participation of the few Native Hawaiians who are members of our profession and organization.

As an organization, Hawaii psychologists are deeply concerned about the plight of the descendents of the original inhabitants of these islands. It is tragic that in a state which enjoys generally good health and strong support for education, Native Hawaiians find themselves at the bottom of most indicators of social progress, including mental health and the training of mental health professionals.

Native Hawaiian individuals mental and emotional health has been adversely affected as a result of cultural disintegration. Poverty, poor physical health, and loss of their land lay the groundwork for emotional and mental problems. When the traditional means of healing and restoring self and group esteem are also jeopardized through cultural disintegration, worsened emotional and mental health follow.

Select Figures on Mental Illness Incidence

For those Native Hawaiians who come to the attention of state mental health facilities, rates of mental disorders are much higher than expected by their proportion of the clinic population. Native Hawaiians rank high in the categories of mental retardation and drug abuse, in a 1979 state study.

In the period of 1978 to 1983, 32% of the 1,109 admissions at the Waimano Training School and Hospital for the mentally retarded were Native Hawaiians. This ratio is grossly out of proportion to their representation in the population.

In 1979, Native Hawaiians comprised 19.4% of alcohol abusers, making them the ethnic group second to haole's in this distinction. The same pattern obtained among drug abusers. However, treatment programs are not designed to the specific situations in which Native Hawaiians drink or develop their alcohol and drug abuse patterns.

Finally, native Hawaiian males between the ages of 15 and 24 years, during the years 1968 to 1972, had the highest suicide rates of the ethnic groups studied, ranging from 126.81 to 52.98/100,000 for those years.

E Ola Mau, the Native Hawaiian Health Needs Study and Historical/Cultural Task Force Report (1985) concludes that these figures suggest that Native Hawaiians may be seen in traditional mental health facilities but that they "are not communicating fully there", due to the cultural discrepancies present. These data speak clearly of the cultural disintegration of the Native Hawaiian, and to the risk of the devastation of the proud Hawaiian sense of identity.

A Community-Based Solution

It is urgent that we acknowledge the special needs of the Native Hawaiians. A community based solution is needed, and it should be one in which Native Hawaiians are integrally involved in all aspects of planning, administration and implementation. If not enough Native Hawaiians have the training for such roles, then such training should begin immediately.

As psychologists, we have seen the failure of the traditional western concepts of mental health for the Native Hawaiian. Based upon culturally inappropriate premises, traditional treatment offers the Native Hawaiian neither understanding nor a problem solving approach that is relevant. A systematic community based approach to addressing the mental health needs of Native Hawaiians might well be built around, in part, indigenous problem solving techniques such as ho'opono'pono and la'au lapa'au.

A Role for Psychology

Members of the psychological profession have been deeply involved in both the Native Hawaiian Educational Assessment Project (NHEAP) (1983), and E Ola Mau, the Native Hawaiian Health Needs Study (1985). We respectfully bring our knowledge and skills in the area of behavioral science to help implement the goals of the Native Hawaiian in addressing their emotional and mental health needs.

We are proponents of an interdisciplinary approach that would employ paraprofessionals and have a community outreach component. As psychologists, we can serve as researchers, practitioners and consultants in various phases of such a project. Because of our psychological approach, we characteristically conceive of preventions and interventions as being both environmental and personal, rather than a function of the psychopathology of individuals alone.

We bring our special expertise in assisting individuals and groups to make lifestyle changes, to change their health habits, and maintain those changes for an improved quality of life of Native Hawaiians. We bring our knowledge of psychological assessment, as well as the ability to determine the appropriateness of existing psychological assessment tools for a Native Hawaiian population. We can modify psychological assessment techniques to make them more culturally appropriate and valid.

Training and Research Issues

We support the establishment of special scholarships for training Hawaiian mental health professionals. Hawaiians are sorely underrepresented in psychology and in our professional society. We cannot effectively serve the Hawaiian population without trained mental health professionals of Hawaiian descent involved in the planning, administration and delivery of services to the Hawaiian community.

Finally, we urge that appropriate research and evaluation activities be instituted for any newly established programs. This will help ensure that the outcomes are maximally beneficial to the Hawaiian community.

In Conclusion

We strongly support the establishment of a comprehensive community based mental health initiative to address the mental and emotional health care needs of the Native Hawaiians. We are grateful for the opportunity to speak with you on this deeply important subject.

Sincerely,

R.C. Kappenberg
Dick Kappenberg, Phd
President
Hawaii Psychological Association